

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO

VOTER REFERENCE FOUNDATION, et al.,  
Plaintiff,

VS.

NO. CV-22-00222 JB/KK

Hector Balderas, Attorney General  
for the State of New Mexico, et al.,  
Defendants.

VOLUME 2

ZOOM HEARING

Transcript of Motion for Preliminary Injunction  
Proceedings before The Honorable James O. Browning,  
United States District Judge, Albuquerque, Bernalillo  
County, New Mexico, commencing on June 15, 2022.

For the Plaintiff: Mr. Eddie Greim; Mr. Matt Miller;  
Mr. Carter Harrison

For the Defendant: Ms. Olga Serafimova; Mr. Dylan  
Lange

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1 THE COURT: Good morning everyone. I  
2 appreciate everybody making themselves available to  
3 me this morning.

4 The Court will call Voter Reference  
5 Foundation, LLC, et al., versus Hector Balderas,  
6 et al., Case Number 22-CV-0222 JB/KK.

7 If counsel will enter their appearances for  
8 the plaintiffs.

9 MR. GREIM: Your Honor, Eddie Greim and  
10 Matt Miller, Graves Garrett, Kansas City, Missouri,  
11 for the plaintiffs.

12 THE COURT: Mr. Greim, good morning to you.  
13 Mr. Miller, good morning to you. And I think I also  
14 see Mr. Harrison there. So Mr. Harrison, good  
15 morning to you.

16 All right. And for the defendants.

17 MS. SERAFIMOVA: Good morning, Your Honor,  
18 Olga Serafimova for the defendants.

19 THE COURT: All right. Ms. Serafimova,  
20 good morning to you.

21 All right. Anyone else needs or wants to  
22 enter an appearance?

23 All right. I think that Mr. Greim --

24 MR. GREIM: Your Honor, before we go, there  
25 is a guest with us today, I just wanted to announce.

1 They won't be appearing. But we have two summer  
2 associates, Claire Hausman and Rachel Owings, who are  
3 at the University of Missouri. So if everyone sees a  
4 "Chausman," that is one of them. So she will be with  
5 us today, not appearing though.

6 THE COURT: All right. Ms. Hausman, good  
7 morning to you. And who was the other one, Mr.  
8 Greim?

9 MR. GREIM: Rachel Owings.

10 THE COURT: All right. Ms. Owings, good  
11 morning to you.

12 All right. Mr. Greim, I think you were  
13 going to present more witnesses or evidence, so I'll  
14 let you start the proceedings this morning.

15 MR. GREIM: Thank you, Your Honor.

16 We're going to start with Ms. Vigil, who is  
17 still with us today. After I finish with her,  
18 Ms. Pino will go, and I think Ms. Serafimova will put  
19 her on, and I will sort of do my cross and my own  
20 direct of her as a witness together. And I think  
21 that will save us some time.

22 THE COURT: All right. Ms. Vigil, I'll  
23 remind you that you're still under oath.

24 Mr. Greim, if you wish to continue your  
25 direct examination of Ms. Vigil, you may do so at

1 this time.

2 MANDY VIGIL,

3 after having been previously sworn under oath,  
4 was questioned and testified further as follows:

5 DIRECT EXAMINATION (Continued)

6 BY MR. GREIM:

7 Q. Ms. Vigil, you recall, when we spoke about  
8 a month ago, we talked about forms quite a bit? Do  
9 you remember that?

10 A. I do.

11 Q. All right. And it's true, isn't it, Ms.  
12 Vigil, that when you receive a form from a requester  
13 for voter data, you don't go and investigate the  
14 underlying information; correct?

15 A. Correct.

16 Q. And you'll even accept older versions of  
17 your forms; correct?

18 A. Correct.

19 Q. And that would include even Exhibit A,  
20 which was the form submitted by Mr. Lippert on behalf  
21 of Local Labs in this case; right?

22 A. Correct.

23 Q. And one purpose of the affidavit in the  
24 form is for users to understand the legal  
25 requirements for the use and sharing of data; isn't

1 that right?

2 A. Right. The affidavit is a required form in  
3 the statute. But yes, the contents are created with  
4 the intent to provide guidance.

5 Q. Okay. I want to switch gears a little bit  
6 and talk about something we skipped over last month.  
7 And that is the Secretary of State's statements, and  
8 also statements that appear on the Secretary's  
9 website about voter data. Okay?

10 A. Okay.

11 Q. So first, I'm going to ask you to take a  
12 look at Plaintiffs' Exhibit 3. And Mr. Miller,  
13 whenever we refer to an exhibit, rather than sharing  
14 a screen, he's going to drop that into the chat.

15 MR. GREIM: You know, before we go further,  
16 I see that one of the later witnesses has logged in,  
17 and we had an agreement that we were going to observe  
18 the rule here. I see Ms. Pino is on right now.

19 MS. SERAFIMOVA: Yes, I think she must have  
20 just logged in. And I'm sorry, Ms. Pino, if I failed  
21 to clarify. As a witness, you cannot be present  
22 right now. But I'll let you know when it's your  
23 turn.

24 MS. PINO: Yes. I'm sorry, they usually  
25 keep me in a waiting room until I'm called, and for

1 whatever reason it let me straight in. So I will log  
2 out and just wait for somebody to notify me.

3 MS. SERAFIMOVA: Thank you.

4 MR. GREIM: Okay. I understand the chat  
5 option may not be enabled here.

6 Q. So let's -- Ms. Vigil, do you have access  
7 to Plaintiffs' Exhibit 3?

8 A. I can pull that up in an email if you give  
9 me just a moment. Plaintiffs' Exhibit -- what  
10 number?

11 Q. Three. Okay. Are you there?

12 A. I am. It is opening right now.

13 MR. GREIM: Is the Court able to see the  
14 exhibits right now?

15 THE COURT: I can find them in the book. I  
16 don't see them on the screen.

17 MR. GREIM: I think I may be able to screen  
18 share after all. So I think I've just done it. Can  
19 everyone see Exhibit 3?

20 THE COURT: The Court can.

21 MR. GREIM: Okay, great.

22 Q. So Ms. Vigil, are you able to see Exhibit 3  
23 as well?

24 A. I am.

25 Q. Okay. And so the only trick here is that I

1 think I have to be the one that scrolls through it.  
2 So I'm just going to go through slowly. I don't  
3 think you're able to do that. Tell me if you can.

4 A. No.

5 Q. Okay. I'm just going to slowly go through.  
6 I'm going to represent to you that before our last  
7 hearing, we just took this shot of the Secretary of  
8 State's website, and particularly went to the spot  
9 that talks about voter data information. Now, we  
10 pulled this down and disclosed it to your counsel and  
11 to all parties last month. Have you seen this  
12 exhibit before?

13 A. I have.

14 Q. Okay. And so do you recognize this as a  
15 true and accurate shot from the Secretary of State's  
16 website?

17 A. Yes.

18 Q. I'm going to direct you to -- we'll go  
19 right here. I'm going to try to move my cursor over.  
20 Do you see there is an area that says, "State of New  
21 Mexico vote data information request," and then it  
22 talks about making a request. You'll see this middle  
23 paragraph it talks about something called SERVIS?

24 A. Um-hum.

25 Q. It describes what can be purchased. Do you

1 see it says, "SERVIS data may be purchased for  
2 government and campaign purposes only." Did I read  
3 that right?

4 A. You did.

5 Q. And then, if you go down to the bottom of  
6 that paragraph, it says, "Anyone who purchases SERVIS  
7 data must sign an authorization form (PDF format)  
8 swearing the data will not be made available for, or  
9 used for commercial or unlawful purposes." Did I  
10 read that correctly?

11 A. You did.

12 Q. Now, are those true statements?

13 A. They are.

14 Q. I'm going to focus on the last sentence in  
15 this paragraph. "Anybody who purchases SERVIS data  
16 must sign the authorization form." And here's what  
17 it says they swear to: "That the data will not be  
18 made available for, or used for commercial or  
19 unlawful purposes."

20 Now, that sentence does not say that you  
21 must sign an authorization form swearing the data  
22 will not be made available, does it?

23 A. I think it's encompassed in the unlawful  
24 purpose. But those specific words are not there.

25 Q. So, in other words, the Secretary of State



1 reads this as, you know, the data not being made  
2 available for an unlawful purpose means the data  
3 can't be made available at all? Is that your  
4 testimony?

5 A. No. I think that this is a high-level  
6 statement. And I think, when you look at the form,  
7 there are more details. But I don't think this is  
8 meant to restate every item in the statute.

9 Q. Okay. So is it your testimony that that  
10 sentence is not fully accurate then?

11 A. I think it is an accurate statement. I do  
12 think it does not go into the same detail that we do  
13 on the authorization form.

14 Q. Okay. Let me ask you this: Can the data  
15 be made available for some lawful purposes?

16 A. I think that the data can be made available  
17 within an organization that appropriately requests  
18 and receives the data.

19 Q. Okay.

20 A. So the data is provided to individuals or  
21 organizations that appropriately request it. So the  
22 data is provided.

23 Q. So the Secretary of State's position is  
24 that the organization can make the data available to  
25 itself?

1           A.     Correct. The requester -- anyone that is  
2     requesting the data may receive and utilize the data.

3           Q.     Okay. And on the form it asks the  
4     requester to disclose an organization; correct?

5           A.     It does.

6           Q.     Okay. And so the Secretary of State's  
7     interpretation is that the data can be disseminated  
8     within the organization but not outside of the  
9     organization?

10          A.     Yeah, if there is a new requester, a new  
11     individual, a new organization, then they need to  
12     also request it for themselves.

13          Q.     Let me ask you about the first line. It  
14     says, "The data may be purchased for government and  
15     campaign purposes only." I don't see anything in  
16     there about "election related." Why is that word not  
17     in the first sentence?

18          A.     I don't think there is a specific reason.  
19     I think it's just an assumption that this section of  
20     the website is relating to all elections. That is  
21     what we do in our office.

22          Q.     Okay. But could someone request the data  
23     for a government purpose that is not election  
24     related?

25          A.     There is a specific definition of

1 governmental purpose.

2 Q. Right.

3 A. So it doesn't require it to be election  
4 specific for the government.

5 Q. Right. So government related is not really  
6 a subset of election related, it's an independent  
7 category; correct?

8 A. I think that it does provide for the  
9 government to use it outside of an election purpose,  
10 correct.

11 Q. Okay. So are there any -- and I asked you  
12 this before; we had a hard time nailing down an  
13 answer -- are there any election-related purposes  
14 that are not government and not campaign purposes  
15 that are permissible?

16 A. No, I think that the two statutory  
17 definitions really encompass any election-related  
18 purpose. So between the two, that should cover all  
19 of the appropriate uses of the data.

20 Q. Okay. Well, your answer had two parts to  
21 it. So first you said that government and campaign  
22 encompasses any election-related purposes, then you  
23 said that government and campaign encompasses all the  
24 permissible uses. And so possibly those two  
25 statements are in conflict, and I want to spend a

1 little time with you on that.

2 What if there is an election-related use  
3 that is to study the way the election was run, so  
4 it's not to advance anyone's campaign. Is that a  
5 permissible use?

6 A. So I think adding a specific hypothetical  
7 question would certainly require some legal analysis  
8 with our general counsel. But, again, I feel like  
9 election -- anything election related is encompassed  
10 by either an election administrator, which would be  
11 the government, and/or an election campaign, or  
12 somebody that is engaging in the election in some  
13 form. So those two definitions really do cover any  
14 sort of election-related purpose.

15 Q. Okay. All right, let's move ahead.

16 I'm now going to take you to Exhibit G,  
17 which is one of our joint exhibits. I will try to  
18 pull that up now. Can everyone see Exhibit G?

19 THE COURT: The Court can.

20 A. Yes.

21 Q. Very good. So I'm going to just slowly  
22 scroll through. I'm going to represent to you that  
23 this has been admitted by the parties as a joint  
24 exhibit. And this is a news release issued by the  
25 Secretary of State on March 2, 2022. And the contact

1 is Alex Curtas, who had been a witness, but we are  
2 not calling him anymore.

3 So as I slowly scroll through, you'll see  
4 this is something about something called the New  
5 Mexico Audit Force, an entity that was involved in  
6 Otero County. And I'm just going to ask you as I  
7 slowly scroll through, do you recognize this  
8 document?

9 A. I'm familiar with that advisory.

10 Q. And did you have a roll in drafting it?

11 A. Not the content, not the exact language,  
12 but certainly I was part of conversations as to why  
13 it was necessary.

14 Q. Okay. I'm going to take you to -- and by  
15 the way, to your knowledge, is all the information in  
16 this accurate?

17 A. Yes.

18 Q. Okay. Let's look at this first bullet  
19 point. Again, this is from March 2, so about four  
20 months ago. The second sentence of the first bullet  
21 point on page 3 says, "This data can only be obtained  
22 by certain groups, like academic organizations and  
23 political parties." And then I think there is  
24 supposed to be a period. It says, "The New Mexico  
25 Audit Force is not one of these specified groups, and

1 has not obtained New Mexico voter data from our  
2 office." Okay, did I read that correctly?

3 A. You did read that correctly.

4 Q. Now, I'm going to ask you about this idea  
5 that it can only be obtained by certain groups. Is  
6 there any reference to particular groups in the  
7 statute?

8 A. No, I think we've covered the two  
9 definitions that guide who can receive the data and  
10 under what circumstance.

11 Q. Is it true that only certain groups can  
12 receive the data?

13 A. I think that the more appropriate  
14 description would be that there is a specific process  
15 that needs to be followed to receive the data.

16 Q. Okay. So there is nothing special about  
17 academic organizations that makes them able to  
18 receive the data; correct?

19 A. Nothing in the statute specifically.

20 Q. Okay. Now, it says, "The New Mexico Audit  
21 Force is not one of these specified groups." Now, is  
22 that the reason why the New Mexico Audit Force was  
23 referred for criminal prosecution that it was not one  
24 of the specified groups?

25 A. No, it was really the way that the data was

1 being utilized, and the fact that they had not  
2 requested the data directly. So we have no idea  
3 where they received the data. That was an issue.  
4 And also the way that it was being utilized to  
5 essentially intimidate voters. That was the problem.

6 Q. I see. And so it was something about the  
7 use that was inappropriate?

8 A. And the fact that they did not request that  
9 data from our office.

10 Q. Okay. I understand your position on that.  
11 I'm going to focus on that first point. So did you  
12 receive information that they were intimidating  
13 voters?

14 A. We did.

15 Q. Okay. And how did you receive that  
16 information?

17 A. We received that information both through  
18 the county clerk's office, who was receiving voter  
19 calls. We received direct voter calls. And there  
20 was also social media information that was being  
21 circulated that we were aware of.

22 Q. Give me an example of what kind of  
23 intimidation, what counts as intimidation?

24 A. So there is a specific statutory definition  
25 of intimidation, that, if you'd like, we can look at

1 that. But in this case, the voters were being told  
2 that they were, first of all, representing a  
3 government entity, which was not accurate. So that  
4 was of concern that they were misrepresenting and  
5 really identifying themselves as a trusted government  
6 entity in that community, which was false. So making  
7 a false statement was of concern.

8 And then, at that point, inquiring as to if  
9 this person voted, how they voted, who they voted  
10 for, information that was not required of the voter,  
11 and was being presented as if it was a requirement to  
12 answer these individuals, because they were  
13 representing a government entity.

14 Q. Was the group hired by the county  
15 government?

16 A. There was a contract with the county  
17 government between this entity.

18 Q. Were the voters threatened in some way?

19 A. I don't have a specific example, but I  
20 certainly watched a video that was circulated on  
21 social media. And that individual felt very  
22 uncomfortable, felt very concerned that their data  
23 was publicly available, and they didn't understand  
24 how or why it was made available, and they didn't  
25 understand if they had to answer, or why this person



1 was in front of them. So there was a lot of concern  
2 and confusion. And in this case that voter did feel  
3 strongly that they were being intimidated.

4 Q. Okay. And so let me ask you, then, would  
5 you agree that the Audit Force, that the category of  
6 work that they were doing was election related?

7 A. You know, it did pertain to gathering  
8 information about an election.

9 Q. Okay. And would you agree that it related  
10 to the government's operation of the election in  
11 Otero County?

12 A. No. This case -- you know, we did look  
13 into the contract in particular. And the Commission  
14 was not in contract with these individuals to do what  
15 they were calling a canvass. So that was something  
16 that they did on a voluntary basis, and it was not  
17 part of their contract with that entity. So I do not  
18 feel like they were doing the work of the government,  
19 no.

20 Q. Okay. Well, I'm not asking if they did the  
21 work of the government. Were they investigating the  
22 conduct of the election, though?

23 A. In particular, by canvassing and  
24 intimidating voters, I do not believe that would have  
25 aligned with a government purpose, no.

1 Q. Okay. And the reason that you call this  
2 "intimidation" is that they stated that they were in  
3 a position of authority, and there was an allegation  
4 that they asked people who they voted for?

5 A. And they were physically appearing at  
6 someone's door, and nobody had any idea why they were  
7 there. And they were in the video that I observed,  
8 you know, aggressive in that nature.

9 Q. Okay. So you watched a video of an  
10 interaction between someone?

11 A. An Otero County voter and a representative  
12 of the New Mexico Audit Force.

13 Q. Okay. So someone recorded one of these  
14 interactions?

15 A. Correct.

16 Q. And so in the Secretary of State's view, is  
17 that a reason under the statute to deny access to the  
18 data?

19 A. I don't think it would be about receiving  
20 data. Again, once you have the data, if you've  
21 received it through the appropriate statutory  
22 process, and then you go on to use it in a way that  
23 is unlawful, those are two separate things. So you  
24 can receive data lawfully, and then, if you choose to  
25 use it unlawfully, those are two separate paths.

1 Q. I understand. I'm asking you about the  
2 first thing. If this New Mexico Audit Force comes  
3 back and says, Okay, there has been a primary --  
4 which I understand there has been recently in New  
5 Mexico -- we want to now understand whether that was  
6 run properly; can we -- you know, we're going to  
7 directly request the voter list. Would their past  
8 conduct be a reason to deny them access under the  
9 statute?

10 A. I would definitely need to seek guidance  
11 from my general counsel in particular. I think if we  
12 had certainty that they were going to use that data  
13 to, again, intimidate voters, it would absolutely  
14 have to be something we would consider.

15 Q. Who decides whether there has been  
16 intimidation by the way? Whose call is that to make?

17 A. I think it's probably -- you know, our  
18 office does have some authority to gather facts.  
19 Ultimately, we are not a law enforcement agency. So  
20 anytime we have a concern with the law potentially  
21 being violated, we at that point would refer it to  
22 the Attorney General, who does have the resources to  
23 truly investigate, and then move forward if there is  
24 a determination that there is a violation.

25 Q. Let me change this to a hypothetical now.

1 Let's say that the New Mexico Audit Force brings in,  
2 you know, new people, and they knock on doors. They  
3 obtain the list from you, and they knock on doors of  
4 people who are listed as having voted, and they say:  
5 Hello, I'm with the New Mexico Audit Force -- or  
6 whatever their name is -- and I'm here to ask whether  
7 you voted. Voter records show that you did, and I'd  
8 like to ask you whether you, in fact, voted. Would  
9 that be a lawful use of the data?

10 A. I think, as long as it doesn't rise to the  
11 level of intimidating the voter, there is not a  
12 prohibition on using the data to interact with  
13 voters.

14 Q. What if they shared some of the data; for  
15 example, by telling the voter that the record shows  
16 that they voted, is that disclosure prohibited under  
17 the statute?

18 A. Disclosing that the voter participated?

19 Q. Right.

20 A. That disclosure is not prohibited.

21 Q. Why not?

22 A. There is not a strict prohibition. That is  
23 public information. There is no way that anyone, you  
24 know, knows how you voted, what selection you made.  
25 But the fact that you participated in an election is

1 public information.

2 Q. So someone sharing information about who  
3 voted is not a violation of the law?

4 A. There is protected information and there is  
5 public information. And I think that when you are,  
6 you know, definitely interacting with someone about  
7 their own information, right, you're having a  
8 conversation with a voter, there is not necessarily a  
9 strict prohibition. If I'm handing over a list of  
10 all voters, that's different, Mr. Greim.

11 Q. Okay. So is there an exception, then --  
12 we've heard the testimony before that all sharing,  
13 regardless of the use, of the voter data is  
14 prohibited. So is there an exception for someone  
15 sharing data with the voter himself or herself?

16 A. I don't know of a specific exception. And  
17 I think that the scenario that you described to me  
18 was one individual having a conversation about their  
19 specific information.

20 Q. Exactly. And my question is -- I don't see  
21 an exception for that in the statute, but it sounds  
22 like the Secretary of State believes there is one.  
23 And I'm just asking, you know, where is that? Is  
24 there some other part of the law that provides that  
25 exception?

1 A. No.

2 Q. That's just the Secretary's chosen method  
3 of enforcing the statute?

4 A. Not necessarily. I think that we are just  
5 discussing one specific scenario in particular, and  
6 that's what my response was to.

7 Q. Okay. Well, we'll try a few more scenarios  
8 later and see if there are other exceptions that  
9 maybe aren't in the statute.

10 Let's move on to Exhibit E. Now, this may  
11 be just a bit blurry, but I'm showing you what we've  
12 marked as Joint Exhibit E. I don't see the exhibit  
13 stamp on this one. But it is the right one. Okay.  
14 I'll hold that -- yeah, this is definitely -- I'll  
15 hold out to you that this is Joint Exhibit E. So --  
16 and this is something that's already been admitted  
17 here by both parties.

18 Do you recognize these tweets from the New  
19 Mexico Secretary of State? I'll just show you one,  
20 then the other. This is the first.

21 A. Yeah, I don't -- you know, I don't observe  
22 every single tweet, but this looks like it is from  
23 our website.

24 Q. Who drafts these tweets?

25 A. Alex Curtas, our communications director.

1 Q. And who ensures that they're accurate?

2 A. I don't know who reviews them before they  
3 go out. I would assume Sharon Pino, who is our  
4 Deputy Secretary. But I do not review every single  
5 tweet.

6 Q. Okay. I'm going to start with this one.  
7 I'm just going to ask you: You'll see the Secretary  
8 of State is shown as a saying, "Voter data in New  
9 Mexico is protected from malicious actors, and voter  
10 data can only be obtained for election campaign or  
11 government/academic purposes by signing an affidavit  
12 and paying a fee." Now, is that accurate?

13 A. I think there is a use of "academic," which  
14 isn't necessarily in the statute. I don't think it's  
15 prohibited. But again, academic is a term that's not  
16 specifically defined in the voter data section.

17 Q. How does the Secretary of State's Office  
18 apply that term "academic"?

19 A. We have not, in particular, had to make a  
20 determination on that term.

21 Q. Okay. Well, do you know where this comes  
22 from? Why the Secretary is telling people academic  
23 is another legitimate purpose?

24 A. Again, I didn't review or draft this tweet.

25 Q. Okay. So who at the Secretary of State's

1 Office can explain this to us?

2 A. I would assume that Alex would be able to  
3 explain that.

4 Q. Okay. Let's see, I'm skipping ahead a  
5 little bit, but I'm going to move down to the next  
6 tweet. And I'll represent to you that this is  
7 referring to the ProPublica article that sort of  
8 launched our controversy here. The date of this  
9 tweet is March the 8th. Do you see that?

10 A. I do.

11 Q. And you'll see that the Secretary of State  
12 sends it out. She says, "Important in-depth piece  
13 from ProPublica regarding coordinated cross-country  
14 attempt to impugn the integrity of our voter rolls."  
15 Do you see that?

16 A. I do.

17 Q. Now, to impugn the integrity of the voter  
18 rolls is not to actually damage the voter rolls; is  
19 it?

20 A. You know, again, I didn't participate in  
21 drafting this tweet, nor do I have information as to  
22 where the details of this content is coming from. I  
23 didn't read the article.

24 Q. Okay, that's fair. That's fair. Let me  
25 ask you: I mean, is it your position that VRF, that



1 our client has impugned the integrity of the New  
2 Mexico's voter rolls?

3 A. I don't have a position on that.

4 Q. Okay. You don't know whether they did or  
5 did not?

6 A. I have not read this article, which I think  
7 that is specifically what that tweet is referring to.  
8 So I don't feel prepared to respond to anything  
9 contained in that article, or our office's  
10 interpretation of the article.

11 Q. Do you know what "impugn" means?

12 A. Yes.

13 Q. Okay. What's your definition of impugn?

14 A. If you'd like to share with me what you  
15 understand that to mean, that's probably a better  
16 approach.

17 Q. Okay. We can go either way. That's all  
18 right. I don't want to prolong this. You know, to  
19 impugn the integrity, I would say is to criticize or  
20 to cast into doubt the integrity of the voter rolls.  
21 And it's probably a degree of severity a little above  
22 what I said.

23 So let me ask you this: Has Voter  
24 Reference Foundation, you know, cast into doubt the  
25 integrity of the voter rolls?

1           A.     Again, you know, I didn't read the article.  
2     But what I do know is that there was statements made  
3     on VoteRef's website, in particular, that spoke to a  
4     discrepancy. And I think using the term  
5     "discrepancy" was an inappropriate use of the term  
6     and interpretation of the data.

7                     So in that case, yes, I think there was  
8     doubt cast, and it was really analyzed in a way that  
9     had incomplete information. So I don't think it was  
10    presented in a way that provided clarity to a reader  
11    about website content. And I do think it  
12    inappropriately called it a discrepancy.

13           Q.     Okay. Now, we talked before about the  
14    Secretary of State's view that this Audit Force  
15    engaged in intimidation, and that that would be a  
16    reason to deny future access to the voter data. Do  
17    you think that VRF's conduct is similar to the Audit  
18    Force's conduct, a reason to deny Voter Reference  
19    Foundation access to the voter rolls in the future?

20           A.     Number one, I think to clarify my previous  
21    response when we were discussing New Mexico Audit  
22    Force, they have not requested the data, number one.

23                     And number two, their specific use and the  
24    examples that we discussed did appear to be  
25    intimidating to voters.

1           And so the purpose of the advisory was to  
2     provide clarity to voters as to what the law provides  
3     for, what they do and do not have to respond to, so  
4     that everyone had the information to handle someone  
5     at their door as they felt appropriate. Now, you're  
6     asking me if Voter Ref has engaged in voter  
7     intimidation?

8           Q.    No. No, my question is whether Voter Ref's  
9     conduct that we just, that you just described, would  
10    form a basis for refusing Voter Ref access to the  
11    data that makes a future request.

12          A.    So Voter Ref is not the same as New Mexico  
13    Audit Force, from my perspective. Their use in this  
14    case is the fact that they are distributing the data.  
15    Making it available on the Worldwide Web is the issue  
16    in particular with VoteRef.

17          Q.    Okay. So your testimony, then, is that  
18    criticism of the voter rolls that you deem to be  
19    inaccurate or unfair should not be a basis to deny  
20    Voter Reference Foundation access to the data?

21          A.    Our concern, in particular, is the fact  
22    that it's being -- that the voter information is  
23    being made public. You are correct.

24          Q.    Okay. So the answer to my question is yes,  
25    then; is that right?

1           A.     The fact that they're analyzing the data is  
2     not a concern. The fact that they are posting  
3     publicly voter information is the concern.

4           Q.     So if someone were to say that the fact  
5     that Voter Reference Foundation took data and blasted  
6     it out across the internet, and that's what violates  
7     state law, limiting use of the voter rolls solely for  
8     campaign and government activity, that wouldn't be  
9     strictly accurate in your view, would it?

10          A.     I'm sorry? Can you restate your question?

11          Q.     Sure. You know what, that's a hard  
12     question. I'll just strike that. We'll move on.

13                 I want to go back to -- I do want to go  
14     back to a few hypotheticals, though, to see what  
15     other exception may exist. And then, you know, we'll  
16     have a few questions after that, and then I'll be  
17     done with you.

18                 So political parties can get the data;  
19     correct?

20          A.     Correct.

21          Q.     The Democratic Party gets the data; right?

22          A.     All parties get the data.

23          Q.     So, for example, could they share it with  
24     the Secretary of State's campaign?

25          A.     I think they can the share it within their

1 organization.

2 Q. Can a democratic candidate as part of a  
3 Democratic Party organization, or is that a separate  
4 entity that has to separately pay for the  
5 information?

6 A. I think, if it's within the party that  
7 they're sharing it, that is still within the  
8 organization. So any party could share it within  
9 their party.

10 Q. Okay, including with candidates?

11 A. Correct.

12 Q. And candidate campaigns?

13 A. Correct.

14 Q. Okay. What about a party sharing it with  
15 volunteers, who are not employees or contractors;  
16 they just answered an ad, and show up one day, and,  
17 you know, go door to door, would the volunteer --  
18 could they share the data with the volunteers?

19 A. Again, you know, I think that our analysis  
20 has reached the level of within the organization. So  
21 if we had factual based scenarios, and it needed to  
22 be reviewed by an attorney, that would be something  
23 that I would check in with the attorney.

24 What I feel confident in stating is that  
25 within the organization is not going to be viewed as

1 an unlawful sharing of the information.

2 Q. Okay. So the answer on the volunteers is  
3 you'd have to check with an attorney?

4 A. Correct.

5 Q. Go ahead.

6 A. I'm good. Thank you.

7 Q. And so, presumably, people, regular  
8 citizens who want to comply with these, also probably  
9 have to talk to an attorney as well to understand how  
10 to comply with this?

11 A. I think anyone can talk to an attorney if  
12 they feel the need to. I don't think that is what I  
13 just stated. I think I -- our office has an  
14 obligation to make sure we're following the statute  
15 in all cases. So if there is ever an area where I  
16 need clarity, I will seek guidance from an attorney.

17 Q. Let's go back to your next -- the other  
18 issue. We talked about Otero County earlier. It  
19 sounds like there is an exception for a canvasser to  
20 discuss someone's information with the voter  
21 themselves. That's how the Secretary of State would  
22 view it; correct?

23 A. I think that there is not a statutory  
24 exception, Mr. Greim. And I think that we are not,  
25 you know, going to be witnessing every instance of

1 somebody having a conversation. So, in particular, I  
2 don't think we would take an action against someone  
3 having a conversation with a voter.

4 Q. Okay. What about if an individual has a  
5 conversation with a voter about that person's spouse  
6 or other members of the household, does that  
7 exception still apply?

8 A. Again, I said there is no legal exception  
9 in the statute for sharing the data.

10 Q. Right. You're just saying you wouldn't  
11 refer it for criminal prosecution?

12 A. In the one specific scenario.

13 Q. Okay. Now, I'm asking you about a new  
14 scenario. What about other members of the household?

15 A. And, again, when we are reviewing  
16 somebody's use of voter data, it's going to be  
17 factually based. So I think we would need to get all  
18 of the information, and I, alone, would not make that  
19 decision. And up to this point, we have not had to  
20 do that analysis.

21 Q. Okay. So the answer is that the Secretary  
22 of State's Office just can't tell us the answer right  
23 now?

24 MS. SERAFIMOVA: Objection, Your Honor.  
25 That misstates her testimony.

1 THE COURT: Well, she can answer the  
2 question. So overruled.

3 A. I don't think there is any difference in  
4 the scenario you're describing, in that, yes, I would  
5 seek guidance from my general counsel.

6 Q. Okay. Let me ask you now about an academic  
7 paper that's exploring the way the election was run.  
8 So one academic pays for the data, and writes a  
9 paper, does a statistical analysis. Then another  
10 academic at a rival university, maybe, I don't know  
11 New Mexico versus New Mexico State, another political  
12 science professor says: I don't agree with your  
13 conclusions; you know, I want to write a review of  
14 your article. Can I see the data? Okay? So is it a  
15 crime -- would you criminally refer the first  
16 academic who shared the data with the second academic  
17 who is trying to verify his conclusions?

18 A. So, again, I think anyone who wants to  
19 receive data, we've established that there is a  
20 statutory process in which they need to complete an  
21 affidavit. In signing that affidavit, they are  
22 agreeing to specific statutory terms that are defined  
23 in Article 5. And so anyone that has statutorily  
24 received that data needs to comply. And so, in that  
25 case, a separate individual, a separate entity would



1 need to also comply with receiving the data.

2 Q. Okay. So the answer is it would be a  
3 criminal referral, then, for the first academic to  
4 share the data with the second academic?

5 A. Again, if somebody is going outside of the  
6 bounds of law, we have an obligation to consistently  
7 apply that law. And if we felt that they were  
8 unlawfully using the data, we would refer it for a  
9 review of a law enforcement agency.

10 Q. Okay. I only have a few more. We could go  
11 on for quite a while, but I won't go on forever,  
12 okay.

13 Let's say a voter, like the Plaintiff Holly  
14 Steinberg here, goes and buys the entire file; hires  
15 programmers so she can use the data; runs her own  
16 analysis. And then she calls VRF and says: Well,  
17 here's what I found. Now, VRF also has the data,  
18 okay? But Holly Steinberg shares the data that she  
19 has with VRF as part of that discussion. Is that a  
20 criminal violation?

21 A. I think my answer will be the same, if  
22 you'd like me to restate it. The data can be shared  
23 within the same organization. Otherwise, individuals  
24 need to obtain that data directly. And again, we've  
25 established in prior conversation that that data is

1 dynamic. It is always changing, being updated. So  
2 it is very unlikely that those two entities would  
3 have the same exact data at a point in time.

4 Q. What if they did have the exact same data  
5 set; they both downloaded them on April 13th at 4:50,  
6 is it a crime for one to share the data with the  
7 other?

8 A. There doesn't seem to be a need to share  
9 the same exact data, so I'm not clear as to how that  
10 would be a real life scenario. But my position  
11 statutorily would not change.

12 Q. The need would be checking to make sure  
13 they have the same data. They find that they did.  
14 Would the sharing, though, if one still shared with  
15 the other, so it's still a crime; correct?

16 A. I think that my answer has not changed.

17 Q. Okay. Finally, what about a company that  
18 buys the data, creates a database, and makes it  
19 available to political clients for a fee, is that a  
20 crime?

21 A. I think that's definitely something that  
22 appears to be sharing the data unlawfully. If it's  
23 outside of their organization, that is still the  
24 issue.

25 Q. Now, we've mentioned the company Catalist

1 last time, the very well-known progressive company  
2 that kind of pioneered this. And we heard last month  
3 that no one in your office had heard of Catalist.  
4 Catalist has been requesting data from you for a long  
5 time. And so, since last month, have you done  
6 anything to find out more about Catalist and what it  
7 does?

8 A. I have not.

9 Q. Okay. Well, do you have any plans to, you  
10 know, look into it, make a referral to the Attorney  
11 General?

12 A. I think, if we are made aware that they are  
13 unlawfully using the data -- so I don't know if  
14 that's your statement here today -- but if our office  
15 is made aware, then we will look into it.

16 Q. Okay. So other than what we have told you,  
17 what's it going to take for you to be made aware,  
18 meet the "made aware" threshold here?

19 A. I think you've asked me questions if I have  
20 an awareness of how they use the data. I have not.  
21 And I have not directly heard from you how they use  
22 the data.

23 Q. Okay. Let's take a look at Exhibit P5.

24 MS. SERAFIMOVA: Your Honor, I'm going to  
25 make an objection here. P5 is hearsay.

1 THE COURT: Well, I haven't heard a  
2 question yet. Let me -- just let me see what the  
3 question is. All that's happened so far is Mr. Greim  
4 has directed the witness to an exhibit. So let me  
5 see what the question is going to be. Go ahead, Mr.  
6 Greim.

7 Q. Okay, sorry. I paused to share screen.  
8 Okay, I've pulled it up.

9 This is Exhibit P5 that was disclosed to  
10 everyone last month. And you've got a declaration  
11 from us saying that we pulled this from the internet  
12 directly from Catalist's website. So I'm just going  
13 to slowly scroll through, and show you what we have  
14 pulled from Catalist.

15 Okay. Now, I'm not offering this as  
16 evidence to prove up what Catalist does. I'm just  
17 offering this as evidence that this exists on the  
18 internet, and that a person who requests data  
19 constantly from New Mexico, publicly says these  
20 things. So not the truth of the matter. It's just  
21 that they're saying it.

22 MS. SERAFIMOVA: A couple of things, Your  
23 Honor. First, counsel is testifying by saying they  
24 constantly request data. There is no evidence in the  
25 record about that. Also, there is no foundation that

1 this witness has seen this before. And the -- (Zoom  
2 audio garbled).

3 THE COURT: Ms. Serafimova, we can't  
4 understand what you're saying.

5 MS. SERAFIMOVA: What do you mean, Your  
6 Honor?

7 THE COURT: Your internet connection is  
8 garbled.

9 MS. SERAFIMOVA: Okay. Is it better right  
10 now? Okay.

11 So counsel stated that this was disclosed  
12 to everyone. I want to clarify it was disclosed to  
13 me, as the attorney, as a potential exhibit. He also  
14 testified which is -- (Zoom audion garbled).

15 THE COURT: Ms. Serafimova, we can't  
16 understand what you're saying. Your connection --

17 MS. SERAFIMOVA: Let me dial in. Would  
18 that be okay? If you give me a second.

19 MR. GREIM: That's better.

20 MS. SERAFIMOVA: Are you able to hear me  
21 better now?

22 THE COURT: Yes.

23 MS. SERAFIMOVA: Wonderful. Thank you for  
24 your patience.

25 So a couple of things. Mr. Greim stated

1 that this exhibit has been disclosed to everyone.

2 I'd like to clarify it's been disclosed to me as the  
3 attorney.

4 He also made a statement that Catalist --  
5 I'm sorry, I kind of lost my train of thought in the  
6 last few seconds -- constantly requests documents  
7 from the Secretary of State's Office.

8 THE COURT: Well, I'm concerned that what  
9 you're doing here is beginning to coach the witness  
10 how to respond. I can consider hearsay on a request  
11 for a preliminary injunction. I'll let you argue the  
12 weight of it and what's wrong with it. But I think  
13 that probably the witness -- Mr. Greim ought to have  
14 a chance to ask the witness what she thinks about it  
15 before you indicate what your thoughts are on it. So  
16 let me just --

17 MS. SERAFIMOVA: But, Your Honor, if I may  
18 make my record --

19 THE COURT: Well, no, you're not making a  
20 record. I think you're trying to coach the witness  
21 as to what to say. So let me --

22 MS. SERAFIMOVA: You can prevent her from  
23 hearing me; correct?

24 THE COURT: Well, let's just take the  
25 witness -- let's just take the testimony, and then

1 I'll take your objection.

2 MS. SERAFIMOVA: All right.

3 THE COURT: Go ahead, Mr. Greim.

4 BY MR. GREIM:

5 Q. Okay. And here's what I've done, listening  
6 to this, I've pulled up Joint Exhibit K, which is  
7 already in evidence. We'll start with that. Let me  
8 ask the witness: You've seen Joint Exhibit K;  
9 correct?

10 A. I have seen it, yes.

11 Q. And tell us what this is.

12 A. We're statutorily required to log any  
13 request we receive for voter data. So this is that  
14 log.

15 Q. Right, because it's important for the  
16 public to know who is requesting voter data; correct?

17 A. Correct.

18 Q. And it's important for you to know that as  
19 well; right?

20 A. It's important that we know who has  
21 requested it, yes.

22 Q. Right. Because, if someone who shouldn't  
23 have the data or someone is misusing the data, you  
24 might make a criminal referral, right?

25 A. It creates a record. So if we are made

1 aware of anything that needs further review, we have  
2 the information to do so.

3 Q. Okay. So let's take a look at exhibit --  
4 I'm sorry, page 2. This is in two different formats.  
5 This was given to us by you. But let me take you  
6 down, you'll see about three-quarters of the way  
7 down, a Nicole Dunger at Catalist requested  
8 Congressional District 1 voter history, and history  
9 from 1990 to 2020. So 30 years of data was requested  
10 on July the 15th, 2021; is that right?

11 A. I really can't see the document on your  
12 screen.

13 Q. I'm going to go ahead and really enlarge it  
14 here.

15 A. Thank you.

16 Q. All right. Now do you see Catalist on  
17 there?

18 A. I do, on July 15.

19 Q. Right. They requested a lot of data,  
20 didn't they?

21 A. They did request several years of data.

22 Q. Okay. And how much did they pay for it?

23 A. I don't know if that column is referring to  
24 the amount, but there is --

25 Q. I see. It looks like it refers to number



1 of records; right?

2 A. Correct.

3 Q. Sorry, I zoomed it in so much, I've got to  
4 scroll back and forth. But it looks like something  
5 like 1.3 million voter records?

6 A. Agreed.

7 Q. Okay. And I assume this request was  
8 processed; right?

9 A. Does it indicate that it was delivered?  
10 Sometimes we don't receive payment, would be a  
11 consideration.

12 Q. Okay. Looks like it was delivered by email  
13 and Kiteworks on 7/16. Do you agree with me?

14 A. I do.

15 Q. Now, unfortunately, the more recent data we  
16 got, they did not tell us the organization. But you  
17 see Nicole Dunger appears again here on December 22,  
18 2021?

19 A. I do.

20 Q. And she again requested about the same  
21 number of records, about 1.3 million records?

22 A. Okay.

23 Q. And it looks like she got statewide voter  
24 data. Do you see over here on the far side?

25 A. Yes.

1 Q. Okay. So you agree with me that Catalist  
2 has been getting data -- we only saw one year; we see  
3 that they've requested it twice in just that one  
4 year; right?

5 A. I do see them receiving it twice.

6 Q. Okay. Now, let me go back. Let's take a  
7 look at anybody who gets on the internet can pull up  
8 and see who Catalist is. And you see where it says,  
9 "Who we are." It says, "At Catalist you are a  
10 partner in a collective, an innovator, and a  
11 participant in the longest running data trust in  
12 progressive politics." Do you see that?

13 A. I see the paragraph.

14 Q. Right. And by the way, let me ask you,  
15 did -- so counsel did not show you Exhibit P5 before  
16 just now?

17 A. I have not seen it prior to right now.

18 Q. Okay. So you've seen all the joint  
19 exhibits; right?

20 A. I have seen stipulated exhibits that we  
21 have discussed. I don't know if it was in its  
22 entirety.

23 Q. Have you seen any of the exhibits that the  
24 plaintiffs disclosed last month?

25 A. We've seen -- I've seen lots of exhibits.

1 You would have to be more specific.

2 Q. Okay. But this exhibit here wasn't shown  
3 to you; correct?

4 A. No.

5 Q. Okay. By the way, after all the talk about  
6 Catalist last month, did you have any discussion with  
7 anybody else in your office about what Catalist was  
8 or who it is?

9 A. I have not.

10 Q. Do you know if anyone else did?

11 A. I don't know.

12 Q. Okay. Let's go on. It says -- this is the  
13 middle of this large paragraph -- "We do this by  
14 providing our data only to democrats and  
15 progressives, and only for civic engagement purposes,  
16 not for commercial for-profit use. And we are able  
17 to do so without threat of this data asset being  
18 bought, sold, or traded for commercial or for-profit  
19 purposes."

20 And it goes on, "What we do. Catalist  
21 compiles, enhances, stores, and dynamically updates  
22 data on over 256 million unique voting age  
23 individuals across all 50 states and the District of  
24 Columbia. Working with Catalist can help you build  
25 membership, target, persuasive messaging, engage

1 activists, drive an issue agenda, and register or  
2 mobilize voters." Did I read that right?

3 A. Um-hum.

4 Q. And then it goes on -- there is a page  
5 break -- and it gives you more detail. The very last  
6 sentence says, "With the Catalist national database  
7 as the foundation, our products help our clients use  
8 their resources more efficiently and make a greater  
9 impact." Did I read that right?

10 A. You did.

11 Q. Okay. And then they go on in more detail  
12 about some of their various products, and we won't go  
13 through all that.

14 So let me ask you, assuming that what  
15 Catalist says on its website is true -- and I know  
16 that we don't know that it is, we haven't established  
17 that in evidence here -- but wouldn't this sharing of  
18 data violate New Mexico law?

19 A. Again, I do not know the details of  
20 Catalist. You have shared this information with me  
21 right here and now. Outside of that, I do not know  
22 anything more as to how they're actually using the  
23 data received from New Mexico. So I do not know how  
24 they are using the data.

25 Q. Okay.

1           A.     Again, our position on the statutory  
2     provisions do not change.

3           Q.     Well, I mean, that's what we're trying to  
4     find out, though, because we've heard some different  
5     things depending on our scenarios. So I'm asking  
6     you, if Catalist is selling the data to progressive  
7     clients, how is that not a violation of New Mexico  
8     law?

9           A.     I do not know if they're doing that, nor  
10    has that been determined. But any entity that has  
11    requested the data should only be sharing that within  
12    their entity, within the same organization.

13          Q.     Well, what would it take --

14          A.     That statement has not changed.

15          Q.     Okay. What more would it take to spark the  
16    Secretary of State's interest in Catalist to maybe  
17    just begin an investigation to see what they're  
18    doing?

19          A.     I don't think I'm asking for anything more.  
20    You asked me if we have. And I have not. And we  
21    have not received any complaint, nor any affirmative  
22    information as to them unlawfully using the data. So  
23    at this point in time, I do not have that  
24    information.

25          Q.     Okay. And so do you have any plans to

1 investigate what Catalist is doing?

2 A. I think that I will happily share that  
3 information with our leadership team, and we can make  
4 the determination, reviewing the use.

5 Q. Okay. Do you have any plans to do that?

6 A. Sure.

7 Q. Okay. So your testimony is that you're now  
8 going to be sharing this information for a review by  
9 the leadership team with the Secretary of State's  
10 Office?

11 A. That is correct.

12 Q. Okay. And you've made that decision during  
13 your testimony today?

14 A. Correct.

15 Q. Okay. I now want to kind of end up here  
16 with an actual request that VRF has made to you. So  
17 I'm going to show you what we've marked as Exhibit  
18 P4. I'm sorry, I'm just a little slow on toggling  
19 around here.

20 This is another exhibit that the plaintiffs  
21 marked and gave to your counsel a month ago. So I'm  
22 going to ask you whether you have seen this Exhibit  
23 P4 before? I'm just going to slowly scroll through  
24 it.

25 A. I have seen this.

1 Q. Okay. Very good. And so at the very top  
2 you see that someone named Patrick Rostock is sending  
3 you an email, copying Sharon Pino; right?

4 A. Right.

5 Q. Mr. Rostock says, "Hi Mandy and Sharon.  
6 Per Dylan's contact with the AG, we are not  
7 fulfilling records requests from VoteRef." Did I  
8 read that right?

9 A. You did.

10 Q. Okay. And at this point this was a pending  
11 records request from VoteRef, wasn't there?

12 A. No, there was not.

13 Q. Okay. And I think I know why you're saying  
14 that.

15 Let's scroll on down. So at the very  
16 bottom you'll see, on February 15, 2022, 4:06 p.m.  
17 someone at data -- at VoterReferenceFoundation.com  
18 wrote, "Dear Election Official, please provide us  
19 with a total count by county precinct of any  
20 registered voters who cast a ballot in the November  
21 3, 2020" -- left out the word "election" -- who have  
22 been subsequently placed in an inactive, canceled,  
23 deleted, removed, or any registration status other  
24 than active, or any voter that has been removed or  
25 deleted from the voter rolls between November 3, 2020

1 and April 13, 2021." Did I read that right?

2 A. You did.

3 Q. Okay. And April 13, 2021, by the way, is  
4 the date of the last data set that VRF had gotten  
5 from the Secretary of State's Office; right?

6 A. They have not received any data from our  
7 office directly.

8 Q. Okay. Fair enough. That's the data that  
9 Local Labs received the data set that had been  
10 provided to VRF; correct?

11 A. I don't have that exact date, but that  
12 sounds reasonable.

13 Q. Okay. And so this request was then  
14 assigned to Patrick Rostock; correct?

15 A. This is a Help Desk Ticket that, yes, was  
16 assigned to Patrick.

17 Q. Who is Patrick?

18 A. He is a new staff member. He's a  
19 paralegal, and serves as the records custodian.

20 Q. Okay. So Patrick Rostock got this ticket  
21 the following day, on February 16th; right?

22 A. Yes.

23 Q. So then, it looks like March 10th, several  
24 weeks later, after having heard nothing back, VRF  
25 asked again, "Good afternoon, can you please provide



1 a status report. Thank you." And that goes to  
2 Mr. Rostock; correct?

3 A. Yes.

4 Q. All right. And then Mr. Rostock, the  
5 following day, forwards this ticket on to you; right?

6 A. He sent us an email.

7 Q. So let me ask you this: When someone  
8 emails your office, do you typically ignore them  
9 altogether unless they happen to have an affidavit  
10 already filled out and attached to their request?

11 A. I don't think there is a goal to ignore  
12 someone who communicates with our office.

13 Q. Okay. Why was Voter Reference Foundation  
14 ignored here?

15 A. In this case, you know, Patrick, in working  
16 with our general counsel, there was a determination  
17 that this was neither a public -- a formal public  
18 records request nor a normal voter data request. At  
19 this point in time, we had already engaged with the  
20 law enforcement agency, and so we did seek their  
21 guidance. And at this point in time, it was  
22 determined that we were not going to provide data.

23 Q. Why not?

24 A. Because we had already referred their use  
25 of the data to a law enforcement agency.

1 Q. Okay. So is there a part of the statute  
2 that says that if you referred someone for  
3 prosecution, you don't answer their requests anymore?

4 A. There is not a statutory provision that  
5 requires us to respond in this case. And there is  
6 not a statutory provision that says you should not  
7 respond. That was a decision made based on the  
8 information we had.

9 Q. Okay. So why would having referred them to  
10 the AG -- and by the way, the AG had not actually  
11 charged them at this point; correct?

12 A. There is no charge that I have an awareness  
13 of.

14 Q. So why did the AG tell you not to respond?

15 A. I can't speak to that. I don't know.

16 Q. Who does know?

17 A. The Attorney General, I'm sure.

18 Q. Well, who is the contact -- who did the  
19 Attorney General speak to in your office?

20 A. Typically, it goes to our general counsel.

21 Q. So do you know whether there was  
22 anything -- let me ask you this: Why not just  
23 respond to VRF and say that you need to submit an  
24 authorization, here's a link to the form?

25 A. It just was determined that we were not

1 going to be providing data at that point in time  
2 based on knowledge that it had already been published  
3 on a website.

4 Q. So you say, "based on knowledge it had  
5 already been published." So you're assuming that  
6 this data would be published, you're just assuming  
7 that; right?

8 A. I think that there is currently an  
9 investigation taking place, in particular, about this  
10 entity. And so we did seek guidance on how to handle  
11 this request in particular. And we were provided the  
12 guidance, as it is stated in the email, that we were  
13 not to provide the data.

14 Q. And you had no knowledge that this data was  
15 going to be published, did you?

16 A. Not at that point in time, that data had  
17 not been received.

18 Q. Okay. And you have no knowledge today that  
19 this data was going to be published; correct?

20 A. If you're referring to the most recent  
21 request from VoteRef --

22 Q. No, I'm referring to this request.

23 A. So this request does not provide any more  
24 information than you've read to the Court.

25 Q. And no one reached out to VRF to find out

1 whether they were going to publish it or not; right?

2 A. No.

3 Q. The answer was just to ignore them; right?

4 A. To not provide data.

5 Q. Okay. So we'll have to ask the AG why they  
6 made this recommendation, and we'll have to ask  
7 someone else at the Secretary of State to understand  
8 why they accepted this advice; correct?

9 A. Correct.

10 Q. Let me now ask you about the most recent  
11 request that you started to talk about. So about 19  
12 days ago you received a notice and a request from our  
13 office on behalf of VRF; correct?

14 A. Correct.

15 Q. Okay. Let's pull that up. Sorry, I  
16 can't -- I'm trying to reduce the size of this so it  
17 makes sense to us.

18 So this is what we marked as Exhibit P10.  
19 Do you recognize this?

20 A. I do.

21 Q. I'm sorry, was the answer yes?

22 A. Yes.

23 Q. Okay. And by the way --

24 MR. GREIM: Okay, I move to admit P10.

25 THE COURT: Any objection, Ms. Serafimova?

1 MS. SERAFIMOVA: No objection.

2 THE COURT: All right. Plaintiffs' Exhibit  
3 10 will be admitted into evidence.

4 Q. So you'll see at the end of this letter --  
5 I won't spend time on the notice in the beginning  
6 part, but you'll see that there is a request for  
7 records here.

8 Now, no response has been made to this  
9 request; correct?

10 A. Correct.

11 Q. And there are actually two separate  
12 requests; right?

13 A. Right.

14 Q. And VRF here says it is willing and ready  
15 to execute the same affidavit that Local Labs  
16 executed; correct?

17 A. Correct.

18 Q. Okay. So why has New Mexico not responded  
19 to this request?

20 A. Number one, we are still within our  
21 deadline to formally respond to this request. But  
22 more importantly, this request does provide  
23 information as to this information again being  
24 published online. And again, as we've established,  
25 that would be, in our interpretation, unlawful. And

1 so we cannot conspire to break the law.

2 Q. Okay. By the way, the deadline is  
3 tomorrow; correct?

4 A. I would have to confirm.

5 Q. Okay. Well, the deadline is 20 days, and  
6 20 days would be tomorrow. I mean, we can be very  
7 sure about that, because it's dated May 27th; right?

8 A. And I don't know the details of where that  
9 20-day deadline is coming from. I know that our  
10 attorney has done some analysis, so there might be  
11 some different review. But I personally do not know  
12 what that exact deadline is.

13 Q. Okay. Well, tell me this: When does New  
14 Mexico believe it's going to respond to these  
15 requests?

16 A. I know that our attorney has calendared  
17 that deadline, and we will be responding within that  
18 timeline.

19 Q. And the response is going to be: No,  
20 because VRF says it will publish; correct?

21 A. Correct.

22 Q. Let's look at the actual request. You will  
23 see that under number one, we asked for a complete  
24 list of any registered voters who cast a ballot in  
25 the general election, the most recent one, who have

1     been placed on inactive, canceled, deleted, or  
2     removed. In other words, this is the same request  
3     that was made back in February; right? More or less  
4     the same request?

5           A.     What request in February?

6           Q.     This is the request we just talked about,  
7     Exhibit P4?

8           A.     So again, you know, we have taken the  
9     position we have not received a formal request, with  
10    the exception of what's up on the screen right now.

11          Q.     Okay, fair enough. This is the same thing  
12    you were asked for in February; correct?

13          A.     I'd have to double-check those -- the exact  
14    data elements.

15          Q.     Okay. You rely on the documents; right?

16          A.     Right.

17          Q.     Okay, fine. And then the second one is for  
18    current voter registration data; right?

19          A.     Correct.

20          Q.     Okay. Now, you'll see the next paragraph  
21    it says: For the first project, which is the  
22    publishing of the data, VRF intends to publish the  
23    requested information online for election-related  
24    purposes, but it will only publish the personal  
25    information of voters online if VRF is granted relief

1 here. Do you see that?

2 A. Is that in the first paragraph?

3 Q. No, it's right after --

4 A. Oh, I see it. I see it.

5 Q. Okay. So --

6 A. That's correct.

7 Q. So VRF is telling you right here that it is  
8 not going to publish the data unless it gets relief  
9 from a court; right?

10 MS. SERAFIMOVA: Your Honor, may I make an  
11 objection on the record? And I'm happy to do it  
12 outside of the witness' hearing.

13 THE COURT: Well, okay, we'll take her out  
14 so she can't hear.

15 MR. GREIM: You know what, Your Honor --  
16 okay, she's gone. Go ahead.

17 MS. SERAFIMOVA: I mean, I think we're  
18 spending a lot of time on this document. But we  
19 intend to appeal -- you know, if the motion for  
20 preliminary injunction is granted, we intend to  
21 appeal the ultimate decision; if it's not in our  
22 favor, we intend to appeal. So I want to make that  
23 clear that -- and these are factors that I am  
24 discussing with their general counsel, who is  
25 preparing their response.



1           So this is legal advice. She doesn't have  
2     the level of knowledge or understanding to take those  
3     factors into account. And what she's essentially  
4     communicating right now in response to Mr. Greim's  
5     questions is things that she has heard from her  
6     general counsel, from myself, in validating this  
7     request. So I hope that --

8           THE COURT: Well, I think Mr. Greim has a  
9     right to find out what the Secretary's position is on  
10    these issues, you know. I guess, if you want to  
11    instruct her not to testify and claim attorney-client  
12    privilege, then we can sort of explore that. But,  
13    you know, people make decisions all the time, and  
14    some of it includes talking to their counsel. So I  
15    guess I don't think there is anything objectionable  
16    to the question. So overruled.

17           All right. Bring the witness back.

18           All right. Mr. Greim.

19           MR. GREIM: Thank you, Your Honor. I think  
20    the witness is still muted. Or is that somebody  
21    else?

22    BY MR. GREIM:

23           Q. Ms. Vigil, are you here?

24           A. Yes.

25           Q. All right. So my question with respect to

1 the first piece is: Do you see that we have said we  
2 are not going to publish it online unless we are  
3 granted relief from this Court or any other legal  
4 proceeding. Do you see that?

5 A. That's for the first project, correct.

6 Q. Right. And so -- I mean, let me ask you:  
7 Is the Secretary concerned that we will publish the  
8 information anyway, you know, in violation of this  
9 promise?

10 A. I'm not clear on what the reference to  
11 "first project" is. Is that request number one?

12 Q. No, let's go back. Let's go back and be  
13 very clear. So we say there are two distinct  
14 projects. It's not really request number one. For  
15 its first project, just as VRF publishes voter data  
16 for many other states, and as it recently published  
17 voter data in New Mexico, VRF intends to publish the  
18 requested information online for election-related  
19 purposes. So the first project is simply to publish  
20 the requested information online, to do what we were  
21 doing before. Okay? So that's the first project.  
22 And we say we'll only do that if VRF is granted  
23 relief in this case or any other legal proceeding.  
24 Do you see that?

25 A. I do.

1 Q. Okay. And so I don't understand the  
2 Secretary's position, as you laid it out, that you  
3 are afraid that VRF is going to publish the  
4 information online. And so my question to you is:  
5 Does the Secretary believe that VRF will break this  
6 promise and will publish the information anyway?

7 A. My response has come from guidance and  
8 direction from our counsel.

9 Q. Okay. I'll stop there with that. So you,  
10 yourself, don't have any information about why the  
11 Secretary is claiming that VRF may publish the  
12 information anyway?

13 A. I don't think that statement has been made  
14 at all, and I certainly have not made that statement.

15 Again, the request has been reviewed, and  
16 based on our counsel's analysis, our understanding is  
17 that we cannot conspire to publish this information,  
18 because it would be against the statute.

19 Q. And the Secretary will maintain that  
20 position even if a court orders otherwise; is that  
21 correct?

22 A. I think we will follow a court order, as we  
23 are required to.

24 Q. Okay. So for the second project, VRF  
25 intends to analyze the records and it will publish

1 its analysis online. But it will do that without  
2 disclosing the personal information of any individual  
3 voter. This is now in the second paragraph down at  
4 the bottom of page 4. So it says, "VRF will comply  
5 with this nonpublic disclosure promise for the data  
6 it uses on the second project regardless of whether  
7 it prevails in the federal litigation." Do you see  
8 that?

9 A. Yes.

10 Q. So VRF here is telling you that no matter  
11 what, for this second project, we are only going to  
12 publish an analysis, and we're not going to publish  
13 the voter data online. Do you see that?

14 A. I see that.

15 Q. So what is the reason, then, for the  
16 Secretary of State not producing the data?

17 A. Again, given guidance from our counsel, and  
18 reviewing of this request, that has been what we've  
19 been provided guidance to do.

20 Q. Okay. So to understand why -- so we  
21 understand the Secretary is going to say no to these  
22 requests. To understand why the Secretary will say  
23 no, they're going to have to ask somebody else; is  
24 that right?

25 A. Our counsel has provided us guidance that

1 in this understanding of this request, VRF intends to  
2 publish the voter data. Therefore, they have  
3 instructed us not to provide the data because we  
4 would be violating the law.

5 Q. Okay. But you can see that, for the second  
6 project, VRF is not going to publish the voter data;  
7 right?

8 A. I can only respond to what our attorney's  
9 guidance is at this point in time.

10 Q. Okay. Who is the person who can give us  
11 some answers at the Secretary of State's Office here?

12 A. We all received the same guidance. You  
13 know, if there is a further legal analysis that's  
14 going to be completed, again, we will respond  
15 formally as required.

16 Q. Who made the decision not to -- to say no?  
17 I understand that legal guidance was given, but who  
18 actually made the decision to follow that guidance?

19 A. It was just based off of the attorney's  
20 guidance. I don't think there was one specific  
21 individual that was in agreement, based on that legal  
22 guidance, of our leadership.

23 Q. Okay. Well, who is the lawyer?

24 A. We have a general counsel named Dylan  
25 Lange, and we have our counsel here, who is Olga.

1 Q. Was Sharon Pino involved in that analysis?

2 A. She was. I don't know about the legal  
3 analysis, but she was part of a conversation.

4 Q. Okay. Well, I mean lawyers give advice,  
5 but ultimately somebody holds the buck -- the buck  
6 stops here. So my question is where does the buck  
7 stop? Who makes the decision to say no?

8 A. And I honestly do not recall one single  
9 individual that stated a final decision. We just  
10 were all in agreement based on a conversation, and  
11 that was based on guidance from our attorneys. So we  
12 did not dispute the legal analysis of our attorneys.

13 Q. Okay. So the two attorneys are Mr. Lange  
14 and Ms. Serafimova?

15 A. Correct.

16 Q. And who are the non-attorneys who came  
17 together to make the decision?

18 A. I recall I was part of the conversation,  
19 Deputy Secretary of State, Sharon Pino, and the  
20 Secretary, Maggie Toulouse Oliver.

21 Q. Anyone else?

22 A. I would certainly be happy to confirm. My  
23 memory -- I don't recall anyone else.

24 Q. Okay. Was the analysis given in a meeting  
25 or in a memo?

1 A. A verbal meeting.

2 Q. When?

3 A. I do not have that date.

4 Q. Was it a week ago? Two weeks ago?

5 A. It was, I believe, prior -- we just had an  
6 election last week -- so I believe it was prior to  
7 the election.

8 Q. Why did you choose to accept counsel's  
9 advice?

10 A. Because I trust their legal analysis. And  
11 I also understand the law. And we have taken the  
12 position that this information cannot be made  
13 available online.

14 Q. But what if someone promises that they're  
15 not going to make it available online? Do you  
16 disregard that promise because you don't trust them?  
17 Let me understand that better.

18 A. I don't understand what the promise is.

19 Q. Well, let's go back to the letter -- and I  
20 won't spend much longer, I'm really grasping to  
21 understand. Let's look at the very bottom paragraph  
22 on page 4.

23 A. And Mr. Greim, I don't have anything more  
24 to offer except that we will follow the guidance of  
25 our attorneys.

1 Q. I'm sure you will. I understand you will.  
2 But I'm entitled to ask you why. I'm not entitled to  
3 ask you, I guess, their -- I suppose, legal  
4 opinion -- but I'm entitled to ask you why you  
5 applied that legal advice in the face of this letter?

6 A. Because our concern is that the information  
7 will be published.

8 Q. Okay. And do you agree with me that the  
9 letter tells you the information will not be  
10 published?

11 A. I see that it intends to publish the  
12 requested information online.

13 Q. Okay. Let's keep reading, though, right.  
14 You're in the second to the last paragraph. But you  
15 didn't quite finish the sentence there, did you?

16 A. And based on our conversation, the concern,  
17 again, was that the information -- there is a  
18 potential for the information to be published online.  
19 That is the concern. I don't have anything more that  
20 I can add.

21 Q. Okay. Let's look closer, though, because  
22 you're one of the three people who made the decision.  
23 You can either choose to follow the lawyers' advice  
24 or not; right?

25 A. And we're --



1 MS. SERAFIMOVA: Your Honor, asked and  
2 answered.

3 THE COURT: Hold on.

4 MS. SERAFIMOVA: This has been asked many  
5 times and it has been answered repeatedly.

6 THE COURT: Overruled.

7 Q. Let's go back to the sentence. Let me ask  
8 you, you can choose not to follow the attorney's  
9 advice; right?

10 A. Sure.

11 Q. Okay. And the same thing goes for Ms. Pino  
12 and Ms. Toulouse Oliver?

13 A. And we are choosing to follow our  
14 attorneys' advice.

15 Q. Very good.

16 A. Based upon the position that there is a  
17 potential for this information to unlawfully be  
18 published online. And, therefore, we will not  
19 provide it with an understanding that there is a  
20 potential for it to be published online.

21 Q. Right. And where you and I part ways, I  
22 think, is that you think that's the end of the  
23 inquiry, and I think that's the beginning of the  
24 inquiry.

25 So I'm going to ask you why you accepted

1 that, when you get this letter from us? I'm going to  
2 take you back to the sentence that we just were with.  
3 Okay, so we're going to go back to that paragraph,  
4 and we're going to keep reading until we get to a  
5 period. Okay?

6 MS. SERAFIMOVA: Objection, Your Honor;  
7 asked and answered.

8 THE COURT: Overruled.

9 Q. So we say, "VRF intends to publish the  
10 requested information online" -- and I'm going to  
11 keep reading, okay -- "for election-related purposes,  
12 but it will only publish the personal information of  
13 voters online if VRF is granted relief in" -- and  
14 then you see this case is mentioned there -- "or in  
15 any other legal proceeding"; right? So the sentence  
16 kept going. Did I read that correctly?

17 A. You did.

18 Q. All right. And so we say we will only  
19 publish that if we're granted relief; right?

20 A. Correct.

21 Q. And you've just said that you will follow  
22 any order of the Court; right?

23 A. Yes.

24 Q. Okay. Now, if we're not going to publish  
25 the information unless we prevail in a court

1 proceeding, how in the world does the Secretary of  
2 State's Office believe that's engaging in a criminal  
3 conspiracy to make the disclosure to us as required  
4 under the law?

5 MS. SERAFIMOVA: Objection; asked and  
6 answered.

7 THE COURT: Overruled.

8 A. Mr. Greim, given the conversation and the  
9 guidance of our attorney, that is the current  
10 position. Again, we have not formally responded to  
11 this. We are required to. You have provided some  
12 additional information that we will discuss with our  
13 counsel, and we will make a formal response to this  
14 request.

15 Q. Okay. Well, if you're still working on it,  
16 that's one thing. But to be clear, all I'm doing is  
17 reading to you from the actual original request. I  
18 don't think I'm telling you anything new here today.  
19 Are you learning something from reading the letter  
20 with me?

21 A. I think that there needs to be a follow-up  
22 conversation. That will occur. We will review the  
23 formal request. That has not occurred yet.

24 Q. Okay. And it's due tomorrow, though;  
25 right?

1           A.     Again, I think I already testified to the  
2     fact that that is currently being handled by our  
3     general counsel. I don't have that date in front of  
4     me.

5           Q.     All right. And just to be clear, there is  
6     no other reason that New Mexico is going to say no to  
7     our response; right? The only reason is that you  
8     believe that we may publish it; right?

9           A.     If the information is going to be  
10    published, yes, that is the concern.

11          Q.     Okay. And there is no other concern;  
12    right?

13          A.     Not at this point in time.

14          Q.     And by the way, the Secretary of State's  
15    Office has not followed up to try to learn any  
16    details about these projects or share its concerns  
17    about publication with VRF, has it?

18          A.     Not to my knowledge.

19          Q.     Okay. Now, is the Secretary of State still  
20    encouraging the Attorney General to prosecute VRF?

21               MS. SERAFIMOVA: Objection, Your Honor;  
22    misstates the evidence; facts not in evidence.

23               THE COURT: Well, I'll allow the question.  
24    We can go into it on redirect. But overruled.

25          A.     I have not directly had any additional

1 communication with the Attorney General. We made the  
2 referral based on the information that you all have  
3 an awareness of. And that is in their hands at this  
4 point in time.

5 Q. You haven't withdrawn the referral?

6 A. No.

7 Q. You haven't told the AG's Office that: We  
8 actually think there may be some exceptions to the  
9 prohibition on sharing?

10 A. There are no exceptions to the prohibition.  
11 And no, we have not -- I have not directly engaged  
12 with the Attorney General on this referral.

13 MS. SERAFIMOVA: Your Honor, may I just  
14 take a moment. You know, when we scheduled this  
15 hearing, Mr. Greim said he had 20 minutes left. And  
16 we are one hour and a half in. And I have, you know,  
17 plenty of questions to go over. So --

18 THE COURT: I'm concerned about it, too. I  
19 didn't want to have this hearing today. I think I  
20 explained my grandchildren were in town. So I came  
21 in today just to do this hearing. And I'm getting  
22 concerned about what's going on myself.

23 Let's take a break. I need to give  
24 Ms. Bean a break. But I'm concerned about what's  
25 taking place myself.

1 All right. We'll be in recess for about 15  
2 minutes.

3 (The Court stood in recess.)

4 THE COURT: All right. Ms. Vigil, I'll  
5 remind you that you're still under oath.

6 Mr. Greim, if you wish to continue your  
7 direct examination of Ms. Vigil, you may do so at  
8 this time.

9 MR. GREIM: Your Honor, I think we're  
10 actually all set with Ms. Vigil. That was my last  
11 topic. I just couldn't get the words out before we  
12 all signed off. I do want to make sure that we've  
13 moved for the admission of Exhibits 3, 4, and 5  
14 before we get out of here: 3 was the website page  
15 for the Secretary of State; 4 was the Patrick Rostock  
16 email with Pino and Vigil; and 5 was the Catalist  
17 page.

18 THE COURT: All right. Any objections to  
19 those three exhibits, Ms. Serafimova?

20 MS. SERAFIMOVA: (Zoom audio garbled).

21 THE COURT: We can't hear what you're  
22 saying. You're giving us a lot of echo.

23 MS. SERAFIMOVA: Your Honor, sorry, I was  
24 in the waiting room with my phone, so that's why I  
25 couldn't respond. But can you hear me okay now?

1 THE COURT: Yes.

2 MS. SERAFIMOVA: Okay, wonderful.

3 So Your Honor, no objection to 3 and 4.

4 Objection to 5, again, hearsay, and no foundation for  
5 its effect on the listener.

6 THE COURT: Well, I'll go ahead and admit  
7 those. I'll sort out in my findings of fact whether  
8 I can and should use number 5. But I'll admit 3 and  
9 4 without conditions. And 5, I'll take it subject to  
10 objections and sort that out when I'm writing the  
11 findings of fact and conclusions of law.

12 All right. So you pass the witness, Mr.  
13 Greim?

14 MR. GREIM: I do.

15 THE COURT: All right. Ms. Serafimova, if  
16 you wish to cross-examine Ms. Vigil, you may do so at  
17 this time.

18 MS. SERAFIMOVA: Thank you, Your Honor.

19 CROSS-EXAMINATION

20 BY MS. SERAFIMOVA:

21 Q. Okay. So Ms. Vigil, I'll just jump right  
22 in. And starting from the beginning, I sent you  
23 copies of all the exhibits; correct?

24 A. You did.

25 Q. Both before the prior hearing and yesterday

1 before this hearing?

2 A. Yes. I have received several exhibits.

3 Q. And yesterday I supplemented with the  
4 exhibits that plaintiffs added later in the day?

5 A. Yes.

6 Q. And I did ask you to review the exhibits  
7 before each hearing; right?

8 A. Right.

9 Q. And I never told you not to read any  
10 document or any information; is that right?

11 A. No.

12 Q. Okay. But in our preparation, we did not  
13 go over each and every document; is that true?

14 A. That is true.

15 Q. Now, also you were asked about Catalist and  
16 why you didn't do anything, or you didn't look into  
17 it since last time; correct? And I'm paraphrasing,  
18 of course.

19 A. Correct.

20 Q. Okay. Did anything important happen  
21 between the last hearing and today's hearing in the  
22 world of the Secretary of State of New Mexico?

23 A. Yes. We conducted the primary election,  
24 and that was on June 7, last Tuesday.

25 Q. Okay. And was that your primary focus



1 during this time?

2 A. Yes.

3 Q. Was there any reason -- did you  
4 intentionally not look into Catalist?

5 A. No.

6 Q. Did you think about Catalist at all?

7 A. To be honest, our focus was on all the  
8 tasks necessary to administer the election.

9 Q. And you looked at one portion of Catalist's  
10 website, right, not the entire website?

11 A. As far as the exhibit, that's the only  
12 thing I've seen of their website.

13 Q. Okay. Now, if that exhibit that's P5 --  
14 and we don't need to pull it up because I have a  
15 hypothetical question -- but if that exhibit  
16 contained language to the effect of: You can see the  
17 data that we received from the Secretary of State's  
18 Office by clicking here, would that give you concern?

19 A. If they were posting the voter data online,  
20 yes, that is concerning.

21 Q. Okay. And that would be unequivocally a  
22 violation, in your opinion?

23 A. Yes.

24 Q. And if that exhibit said something to the  
25 effect: You can buy a copy of the file that we

1 received from the New Mexico Secretary of State's  
2 Office by, whatever the process is, would you find  
3 that unequivocally to be a violation of the Election  
4 Code?

5 A. Yes.

6 Q. And if that exhibit said: We, Catalist,  
7 share every file we receive from the New Mexico  
8 Secretary of State's Office with I360 because we have  
9 the same ideological connection, would that be a  
10 violation of the Election Code, in your opinion?

11 A. Yes.

12 Q. Okay. But none of that was on there;  
13 right?

14 A. No.

15 Q. And you don't actually know what their  
16 product is?

17 A. I do not.

18 Q. And you don't know if the database they  
19 mentioned contains information from other sources  
20 other than secretaries of state?

21 A. I don't know.

22 Q. You have no idea what that product is?

23 A. I have no idea.

24 Q. Okay. And then you were asked another  
25 hypothetical: If one academic uses voter data

1     obtained from your office, and then shares that voter  
2     data with another academic, would that be a  
3     violation. And your answer was: Yes, it appears  
4     that it would be; correct?

5             A.     Correct.

6             Q.     And that answer is not dependent on the  
7     topic of the first academic's paper, is it?

8             A.     No. My understanding of that scenario was  
9     sharing the actual data, the voter file.

10            Q.     And your answer was not dependent on the  
11    topic of the second academic's paper?

12            A.     I have no idea what those topics are, no.

13            Q.     Okay. So the content of those papers is  
14    not relevant to you?

15            A.     No.

16            Q.     And the viewpoint that each hypothetical  
17    academic may hold or express in their paper, that's  
18    also not of concern to you?

19            A.     It is not.

20            Q.     Those are completely irrelevant subjects;  
21    right?

22            A.     Correct.

23            Q.     Now, you were asked about sharing and if --  
24    and let's say, if VRF discusses the data that they  
25    receive from your office, if that would be a

1 violation; right?

2 A. It was.

3 Q. Okay. And the statute, 5.6, this is what  
4 we're talking about; right?

5 A. Correct.

6 Q. That statute says: Selling, loaning,  
7 providing access to, or otherwise surrendering the  
8 voter data, that's our interpretation; correct?

9 A. Right.

10 Q. It doesn't say discussing the data?

11 A. It does not mention discussing the data.

12 Q. So when someone requests voter data in  
13 compliance with 5.5, they receive a file from your  
14 office; correct?

15 A. Yes.

16 Q. So if I sign an affidavit, receive that  
17 file, and then, you know, put it on a Drop Box and  
18 let other people have access to it, would that be a  
19 violation?

20 A. Yes.

21 Q. But me discussing what I saw in that file  
22 and any discrepancies that I may have identified with  
23 other people, would that be a violation?

24 A. No. It's specifically sharing the content  
25 of the data, the file. When I say "voter data," that

1 is what I'm referring to.

2 Q. Okay. And if I make paper copies of the  
3 file, thousands of pages, right, and I just hand them  
4 out to people, would that be a violation?

5 A. Yes.

6 Q. Okay. So let's talk about 5.6 a little  
7 more.

8 You have heard Mr. Greim express the  
9 position that in this case, you know, with respect to  
10 VRF specifically, the Secretary of State's Office is  
11 now advancing a so-called new interpretation of the  
12 Election Code; right?

13 A. Right.

14 Q. And you been employed by the Secretary of  
15 State's Office for how long?

16 A. For 11 years.

17 Q. Okay. And during those 11 years, has the  
18 Office's interpretation of 1-4-5.6 ever changed?

19 A. It has not.

20 Q. And what is that interpretation?

21 A. So 1-4-5.6 refers to the use of voter data.  
22 And within that same section it actually refers us to  
23 a section in Article 5 that gives us the details on  
24 prohibitions of using that data. And in that case,  
25 it then applies to everyone that would receive that

1 data from our office. So we believe that there are  
2 some prohibitions identified in the statute for how  
3 that data may be used. And mainly, you know, the  
4 prohibitions identified in our affidavit.

5 Q. Okay. So that's the selling, loaning,  
6 providing access to, and so on; correct?

7 A. Yes.

8 Q. And you mentioned the affidavit, so I will  
9 pull up stipulated Exhibit 8, which is the oldest  
10 version of the affidavit that we have in the record  
11 in this case, if you just give me a second. And  
12 while I'm doing that, can you tell us -- so Exhibit  
13 8 -- which is coming, I promise -- here it is -- was  
14 this the version of the form that was in use when you  
15 joined the Secretary of State's Office?

16 A. Yes.

17 Q. So we're talking about this first sentence  
18 right here, right, under "Authorization." And that  
19 sentence is actually identical in all four versions  
20 that we have on record in this case; correct?

21 A. You're correct.

22 Q. So I, A, J, and H. So this language has  
23 not changed since at least 2011; is that right?

24 A. That's right.

25 Q. Now, does this form ever go to data

1 processors?

2 A. No.

3 Q. In your 11 years, have you ever seen one of  
4 these affidavits be signed by a data processor?

5 A. I have not.

6 Q. So data processors are not the intended  
7 audience of this form?

8 A. No.

9 Q. So who is?

10 A. Any member of the public that is requesting  
11 data.

12 Q. And it was your testimony that this  
13 language informs requesters that they may not sell,  
14 loan, provide access to, or otherwise surrender voter  
15 data; am I correct?

16 A. Correct.

17 Q. Okay. So this affidavit was updated in  
18 February of this year; right?

19 A. It was.

20 Q. Okay. And I'll just bring up -- I believe  
21 this is the first update, but they're identical. So  
22 this is the February 5th of 2022 version; right?

23 A. Correct.

24 Q. So the sentence that we just discussed, the  
25 first sentence, is identical; correct?

1 A. Yes.

2 Q. But then you add these line items, I call  
3 them, that each requester has to acknowledge, whether  
4 by checking off -- yeah, okay?

5 A. By initials.

6 Q. Okay. By initialing. Oh, yes, you're  
7 right. Okay. So if this first sentence already  
8 informs the requester that they may not sell, loan,  
9 or provide access to the information that they  
10 receive by way of this affidavit, why did the Office  
11 also include it as a separate line item?

12 A. We added that just to provide clarity to  
13 anyone that is completing this form, just as an  
14 attempt to make sure that we're both educating and  
15 providing them clear guidance on what they're  
16 agreeing to.

17 Q. And what triggered this update?

18 A. Just feedback and working with other  
19 election administrators, specifically our county  
20 clerks, they're required to use this form. There has  
21 certainly been an increased request for data. So in  
22 just using it more and learning more about the  
23 process, we received feedback that it would be  
24 helpful to be clearer in this document.

25 Q. So did this update have anything to do with



1 either VRF, the VoteRef website, Local Labs, or this  
2 lawsuit, generally?

3 A. No.

4 Q. Okay. So then if we can talk about 5.5 for  
5 a second, and I'll pull up State's Exhibit 4. Give  
6 me just moment. And you're familiar with that  
7 statute; right?

8 A. Yes.

9 Q. Here it is. So here is Section 1-4-5.5.  
10 Now, does this section -- tell me if you need me to  
11 scroll up or down, I know you're familiar with it,  
12 but does this section mention anywhere election  
13 purposes?

14 A. No.

15 Q. Election-related purposes?

16 A. No.

17 Q. Anything to that effect?

18 A. No. There are just two definitions.

19 Q. So paragraph C says, governmental or  
20 election and election campaign purposes, right?

21 A. I'm sorry, I didn't hear you entirely.

22 Q. So paragraph C contains the phrase  
23 governmental or election and election campaign  
24 purposes, right? We're looking at it right here?

25 A. Yes.

1 Q. And so this is really the only occurrence  
2 of election kind of on its own; is that right?

3 A. That's right.

4 Q. And like you stated correctly, election  
5 campaign purposes is defined, and governmental  
6 purposes is defined. But that's it; correct?

7 A. Correct.

8 Q. So does the Office believe that  
9 definitions, which are (e)(1) and (e)(2), that these  
10 are the controlling terms, the only defined terms?

11 A. Those are the only defined terms, correct.

12 Q. And is that why you updated the form in  
13 2022, in February of this year, to remove "election  
14 related"?

15 A. Yes, to align with the statute.

16 Q. Did you also at that time pursue a  
17 statutory amendment to take out this term right,  
18 "election," in paragraph C?

19 A. We did.

20 Q. Because it creates a little bit of an  
21 ambiguity; right?

22 A. Correct.

23 Q. And what happened? What was the result of  
24 that process?

25 A. So that provision -- actually, we were

1       successful. It moved forward to the House. It was  
2       not considered in the Senate, so it did not pass.

3           Q. Did it pass the House?

4           A. It did.

5           Q. And did it do so on the last day of the  
6       legislative session?

7           A. There was a time issue, correct.

8           Q. Okay. So did either of these actions,  
9       taking "election related" out of the form and  
10      pursuing the statutory amendment, did either of those  
11      actions have anything to do, again, with VRF, any of  
12      the plaintiffs, the website, this lawsuit, Local  
13      Labs, any of that?

14          A. No.

15          Q. Then why did you pursue them?

16          A. Again, in just -- kind of corresponding  
17      with any other stakeholders, mainly our county  
18      clerks, and just those that are utilizing, you know,  
19      this form, and reviewing the statute, we felt like we  
20      needed to provide clarity; that that was an  
21      unnecessary term that was simply creating confusion,  
22      so it was just part of cleanup.

23          Q. And I'm sorry, I moved a little ahead. Are  
24      you able to see Exhibit H at this point on my screen?

25          A. I'm still seeing the statute.

1 Q. Okay. So forgive me, let me share that.  
2 Okay. So we'll look at Exhibit H, again, which is  
3 the version that's been in use at least since 2011  
4 and through 2020; right? It was changed in 2021?

5 A. Changed in January of '21, yes.

6 Q. Okay. All right. So this was in use for  
7 at least 10 years, starting at least in 2011, maybe  
8 prior to that, but we don't know, because you were  
9 not in the office before that; right?

10 A. Right.

11 Q. So you see that this form actually has  
12 research as one of the purposes; right?

13 A. I do.

14 Q. And I represented to you yesterday in  
15 preparation that research was actually part of  
16 Section 5.5 up until 2011, when the legislature  
17 changed the language; right?

18 A. You did, you did share that.

19 Q. Okay. So yes, this term "research"  
20 remained on the form under "purposes" until January  
21 of 2021; right?

22 A. It did.

23 Q. When version A, Exhibit A, replaced this  
24 version of the form?

25 A. Right.

1 Q. And then down here in "Authorization,"  
2 second sentence, it also mentions research; right?

3 A. Um-hum.

4 Q. And that term remained in the form until  
5 2022, when versions I and J were put out; correct?

6 A. Right.

7 Q. And this version H, which was in use since  
8 2011, also includes "election related"; right?

9 A. It does.

10 Q. And I represented to you yesterday that the  
11 definitions for governmental and election campaign  
12 purposes were added to the statute by the legislature  
13 in 2015; right?

14 A. Right.

15 Q. And yet "election related" remained on the  
16 form, again, until 2022?

17 A. It did.

18 Q. So is it fair to say that this form, while  
19 it may be desirable, does not get updated the moment  
20 that the language of the statute changes; right?

21 A. Right.

22 Q. Sometimes there is quite a delay; right?  
23 In the case of "research," we had a decade?

24 A. Correct.

25 Q. And that just happens in state government;

1 right?

2 A. Correct.

3 Q. There was nothing intentional about failing  
4 to update this form prior to 2021?

5 A. There was not.

6 Q. Okay. And was the update of taking out  
7 "election related" again, at all related to the  
8 plaintiffs in this case or this case or Local Labs or  
9 anything that we're talking about in this lawsuit?

10 A. No.

11 Q. Okay. And I think -- well, what prompted  
12 the specific update of taking "election related" out?

13 A. Again, you know, with the increase in  
14 requests for this data, and different entities  
15 seeking this data, it was just highlighted as a need  
16 to clarify the process and update our documentation  
17 to align and to support the statute. So it was  
18 really, again, just based on questions received from  
19 either a requester, a county clerk, and being  
20 reviewed, the documents in the process, and make it  
21 clearer.

22 Q. Okay. And, by the way, before I forget,  
23 would you say that the term "academic" would be  
24 related to research?

25 A. It certainly could.

1 Q. So you also testified, and I think you  
2 covered this today, but very quickly, you also  
3 testified that you were asked -- and I'm again  
4 paraphrasing -- but you were asked whether there were  
5 any purposes that were allowed prior to "election  
6 related" being taken out of the form that are no  
7 longer allowed today. And what is your answer, if  
8 you wouldn't mind?

9 A. I'm sorry, if you could repeat your  
10 question, Olga.

11 Q. You were asked whether there are any  
12 purposes that voter data can be used for that were  
13 allowed when this form was in use, and it had the  
14 "election related" option, but are no longer allowed  
15 today now that "election related" is not part of the  
16 form. Do you remember?

17 A. I do remember. And changing that does  
18 not -- did not make any change or narrow the scope as  
19 to how this data can be used.

20 Q. Because your office does not change the law  
21 by changing the form, by updating the form to reflect  
22 the law; correct?

23 A. Correct.

24 Q. Okay. And so that change was not intended  
25 to narrow the scope of permissible uses that

1 requesters may engage in; correct?

2 A. No. Again, just cleaning up the form to  
3 really align with the statute.

4 Q. Okay, now, you were also asked about, you  
5 know, certain paraphrases of this language on your  
6 website. And I'm pointing to this -- if you'd give  
7 me just one second.

8 Okay. So if I can draw your attention to  
9 the second sentence under "Authorization." It says,  
10 "I hereby swear that the requester will not use or  
11 make available to others to use the requested  
12 material for purposes other than governmental  
13 election research and campaign purposes." Okay. And  
14 I think this language "will not use or make available  
15 to others to use," that was also on your website. Do  
16 you remember that?

17 A. Yes.

18 Q. And you were asked: Can one make the data  
19 available to others to use for any lawful purposes?  
20 Do you remember that?

21 A. I remember.

22 Q. Okay. And now, if I can take you again to  
23 State Exhibit 4. Okay. And if we look at paragraph  
24 C, it says, "Each requester" -- and I'm skipping  
25 forward -- "shall sign an affidavit that the voter



1 data shall not be made available or used for unlawful  
2 purposes." Do you see that?

3 A. I do.

4 Q. So would you agree with me that the second  
5 sentence under the affidavit is, almost verbatim,  
6 quoting from 5.5?

7 A. Right.

8 Q. And then it is -- let me just pull it up  
9 again. Okay, here we go. So the first sentence is  
10 the one that references 5.6; is that correct?

11 A. You are correct.

12 Q. And then the second sentence references  
13 5.5, which has its own mention of use in making  
14 available; is that right?

15 A. Yes.

16 Q. All right. Now -- and we just covered  
17 this -- you do continue to honor any and all versions  
18 of this form that your office receives, as long as  
19 they're fully and properly filled out; right?

20 A. That's correct.

21 Q. And, of course, as long as you don't have  
22 any actual knowledge that the data will be used  
23 unlawfully?

24 A. Right.

25 Q. Is that a fair paraphrase?

1 A. Right.

2 Q. All right. So you were asked last time  
3 if -- and you discussed this earlier today -- but the  
4 question was whether it is the Secretary of State's  
5 position that if a requester shares information,  
6 regardless of why they do it, they have made a false  
7 affidavit, or if they have otherwise violated the  
8 law, New Mexico law, do you remember that?

9 A. I do.

10 Q. So I'm going to pull up -- I believe this  
11 is Exhibit I -- and this is the most recent -- but  
12 again, the most recent version, I believe -- or at  
13 least since February of this year, but they all have  
14 the same language in relevance to what I'm about to  
15 cover. Okay. So this is the February 10th version,  
16 but it's recent enough. So under "Information of  
17 Requester," it does have a space for "Organization";  
18 right?

19 A. Right.

20 Q. So it presupposes that the requester can be  
21 an entity; is that correct?

22 A. Yes.

23 Q. And it can also be an individual; correct?

24 A. Right.

25 Q. And you were asked and I think we covered

1 this, so very briefly you were asked: If a political  
2 party requests to use the data on its own behalf as  
3 an entity, can that voter data be shared internally.  
4 And what is your position?

5 A. Yes.

6 Q. And the same for a company, right, if a  
7 company requests on its own behalf, meaning they bear  
8 the criminal responsibility of an entity, right, they  
9 can share internally, but not externally. Is that  
10 your position?

11 A. Yes.

12 Q. But if that political party or hypothetical  
13 company goes out to upload the file that they receive  
14 from you to the internet, that would be a violation;  
15 right?

16 A. Right.

17 Q. And if, let's say, the Republican Party  
18 shares with a Libertarian candidate, that would be a  
19 violation unequivocally; right?

20 A. Right.

21 Q. And then, of course, you were asked more  
22 nuanced questions, and you said you would need to  
23 seek legal counsel; right?

24 A. I did.

25 Q. But these are more black and white

1 situations where you don't have hesitation; correct?

2 A. Correct.

3 Q. And your prior answer is consistent with  
4 these hypotheticals; right?

5 A. Yes.

6 Q. Now, you were asked questions about denying  
7 a request by VRF. So let's go over that quickly.

8 You have never actually denied a request  
9 for voter data where an affidavit is properly filled  
10 out, we've covered that; right?

11 A. Right, we have not.

12 Q. Even if an incorrect version or an older  
13 version of the form is used?

14 A. Right.

15 Q. And you did not deny Mike Lippert or Local  
16 Labs' request that led to this case; correct?

17 A. Correct.

18 Q. And, as you discussed with Mr. Greim, up  
19 until May 27th, VRF had never submitted an affidavit  
20 for voter data; right?

21 A. Right.

22 Q. And they did do so on May 27th, and that  
23 affidavit is part of P10; right? Plaintiffs' Exhibit  
24 10.

25 A. Yes.

1 Q. Sorry, Plaintiffs' Exhibit 10. And let me  
2 pull it up real quick. Here we go.

3 Okay. So again, as of today, you have not  
4 denied an affidavit that they have submitted; right?

5 A. We have not.

6 Q. You may deny it tomorrow; is that correct?  
7 And this is the affidavit.

8 A. We have not, again, taken a final position,  
9 but there is a potential, based on the concern of the  
10 data being made public, meaning posted online.

11 Q. And we did discuss -- you and I and the  
12 other people that you identified -- we did discuss  
13 this request in the recent past -- I'm not sure  
14 exactly when it was -- right?

15 A. Right.

16 Q. And do you remember that we discussed that  
17 some data may be provided and other may be withheld,  
18 but we needed to take a look at all the data to make  
19 the final decision?

20 A. Correct.

21 Q. And you haven't seen a draft response?  
22 Your general counsel is working on that response;  
23 correct?

24 A. Correct.

25 Q. You haven't seen that draft response?

1 A. I have not.

2 Q. Okay. So you don't know, and you haven't  
3 seen the data that was pulled in response to this  
4 Plaintiffs' 10, which is a request, a lengthy  
5 request?

6 A. I have not.

7 Q. Okay. And, you know, Mr. Greim asked you,  
8 you know, why not just take their promise at face  
9 value. I know you're not an attorney. But do you  
10 know if this is a legally binding promise of any  
11 sort, where they say that they will not upload the  
12 data that they receive?

13 A. I'm not an attorney, but this does not  
14 appear to be a legally binding document.

15 Q. Okay. So that's just their promise first  
16 of all, right?

17 A. Right.

18 Q. And secondly, they state -- I'm sorry, here  
19 we go -- they state that they will not upload the  
20 data unless they are granted relief in this case or  
21 any other legal proceeding; right?

22 A. Right.

23 Q. Okay. So, if the Court grants their motion  
24 for preliminary injunction, right, which means allows  
25 them to put the data online, then we go and appeal,

1 and an appellate court says: No, that was a mistake,  
2 would the harm have been done, meaning if you give  
3 them additional information, that would already be  
4 online, even though, ultimately, it would have been a  
5 mistake; correct?

6 A. Correct.

7 Q. Okay. And with respect to this particular  
8 affidavit, which is the first and only that VRF has  
9 submitted, and the first and only that your office  
10 actually plans on denying, right, you're doing it  
11 because I advised you that you would potentially be  
12 committing a conspiracy; is that right?

13 A. Correct.

14 Q. So if the request is denied, it will be on  
15 my advice not to violate the New Mexico Criminal  
16 Code?

17 A. It will be based on the advice, yes, and  
18 the fact that we do not want to violate the law.

19 Q. Okay. So would you call this a unique  
20 circumstance?

21 A. Absolutely.

22 Q. Okay. I'll move on from the form. I will  
23 pull up State's Exhibit 6 and State's Exhibit 7. And  
24 we'll start with 6. Here we go.

25 And so I'll represent to you, even though

1 you may know, that both the complaint in this case  
2 and the motions cite to -- and this is State's  
3 Exhibit 6; it's three pages, so I'm going to go to  
4 the last page -- both the complaint and the motions  
5 provide and rely on this press release from the  
6 Office, and another one which is State's Exhibit 7.

7 So first, I want to ask you, are you  
8 familiar with this press release?

9 A. Yes.

10 Q. Dated June 30, 2017, for the record. And  
11 then, going to the actual letter that is in front of  
12 it, June 28, 2017, a letter from the Presidential  
13 Advisory Commission on Election Integrity. Are you  
14 familiar with that letter?

15 A. Yes.

16 Q. Does the press release at the end of  
17 State's Exhibit 6 announce your office's decision to  
18 deny the request for data or documents that is  
19 contained in this letter?

20 A. I'm so sorry, Olga. I'll ask you to repeat  
21 that.

22 Q. No worries. Sure. Let's look at the  
23 highlighted language on the first page. It says, "I  
24 am requesting that you provide to the Commission the  
25 publicly available voter roll data for New Mexico,



1 including, if publicly available, the first and last  
2 names," and goes into detail. So you agree that this  
3 letter requested voter data; right?

4 A. It did.

5 Q. And then the press release says, "My office  
6 has not yet received the letter. But that being  
7 said, I will" -- it goes on to say that the office  
8 will not release personally identifiable information  
9 and not release any other voter information, like  
10 names or addresses "until I am convinced the  
11 information will not be used for nefarious or  
12 unlawful purposes"; right?

13 A. Correct.

14 Q. So this press release, June 30, 2017,  
15 responds to this letter request, June 28, 2017; am I  
16 correct?

17 A. You are correct.

18 Q. Okay. And this letter is not an affidavit  
19 as required under Section 5.5, is it?

20 A. No.

21 Q. And, in fact, under Section 5.5, you can  
22 only provide voter data if you receive such an  
23 affidavit; is that right, under Section A?

24 A. It is required, you're correct.

25 Q. So actually, the Secretary of State was

1     statutorily required to deny this letter request, was  
2     she not?

3             MR. GREIM:   Objection, leading, and calls  
4     for a legal conclusion.

5             THE COURT:   Try, Ms. Serafimova --

6             MS. SERAFIMOVA:   Your Honor, may I respond?

7             THE COURT:   Well, no.   You're leading, and  
8     you have been leading.   So let the witness testify.  
9     She's your witness, so make sure you don't lead.

10            MS. SERAFIMOVA:   Your Honor, I'm doing  
11     cross.

12            THE COURT:   You're still -- she's your  
13     witness.   She's a friendly witness.

14            MS. SERAFIMOVA:   Well, she was --

15            THE COURT:   No.   Ms. Serafimova, I've made  
16     my --

17            MS. SERAFIMOVA:   May I make my record,  
18     please?

19            THE COURT:   No.   You're arguing with the  
20     Court.

21            MS. SERAFIMOVA:   I'm asking you to let me  
22     make a record.   Mr. Greim led her the entire time.  
23     She's his witness, he subpoenaed her.

24            THE COURT:   Ms. Serafimova, stop.   You're  
25     arguing with the Court.

1 MS. SERAFIMOVA: Your Honor, I need to make  
2 a record.

3 THE COURT: Stop leading. That's the  
4 ruling of the Court. Stop leading.

5 MS. SERAFIMOVA: Even though Mr. Greim was  
6 allowed to lead?

7 THE COURT: Yes.

8 MS. SERAFIMOVA: Even though he subpoenaed  
9 her?

10 THE COURT: Yes.

11 MS. SERAFIMOVA: Okay.

12 BY MS. SERAFIMOVA:

13 Q. All right. So, okay, let's go to State's  
14 Exhibit 7. Give me a second.

15 Okay. Are you familiar with this letter,  
16 July 26, 2017?

17 A. Yes.

18 Q. And what is this letter?

19 A. This letter is from the Presidential  
20 Advisory Commission on Election Integrity. It was  
21 submitted to our office. And, ultimately, it is  
22 requesting data from our office.

23 Q. And then we go to page 3, it's a press  
24 release dated July 27, 2017. Are you familiar with  
25 this press release?

1 A. I have seen this press release.

2 Q. And what does that press release do with  
3 respect to the letter that we just discussed?

4 A. Again, this, similar to the one prior, is a  
5 response to that request.

6 Q. Okay. And it's a denial?

7 A. This request does indicate that our office  
8 will not be providing that data, yes.

9 Q. Okay. And is this letter -- again, is this  
10 letter an affidavit, as required under Section 5.5?

11 A. This is not an affidavit, as required, to  
12 be able to lawfully provide data to a requester.

13 Q. Okay. So changing subjects, going to  
14 Catalist and I360. I will pull up State's Exhibit 3.  
15 So State's Exhibit 3 has four pages, and these are  
16 two affidavits by Catalist and two affidavits by  
17 I360. Do you see that? Catalist, Catalist, I360,  
18 I360; right?

19 A. Right.

20 Q. And these are the exhibits we have for the  
21 record in this case. Have you had a chance to look  
22 at them?

23 A. I have seen them.

24 Q. Okay. Can you tell us whether they are  
25 complete on their face?

1 A. The requests are complete on their face.

2 Q. And do they contain any information to  
3 suggest that voter data would be used unlawfully?

4 A. No.

5 Q. And so were they treated differently from  
6 anyone else who submits a fully executed valid  
7 affidavit?

8 A. No, the data was provided.

9 Q. So you did not treat them more favorably?

10 A. No.

11 Q. And you did not treat them less favorably?

12 A. We did not.

13 Q. Okay. And as you sit here today, do you  
14 have any reason to believe that either one of these  
15 companies is violating New Mexico law in the way  
16 they're using the voter data?

17 A. I do not have that information, no.

18 Q. And if you did, would you report them to  
19 the Attorney General's Office for investigation?

20 A. Yes.

21 Q. All right. Now, if we can go to P2,  
22 Plaintiffs' Exhibit 2. Give me a second. You were  
23 asked, you know, if your office responded to emails  
24 from VoteRef, if you remember. So this is one such  
25 email. Have you seen this before?

1 A. I have seen this exhibit.

2 Q. Okay. When did you see -- I know it's an  
3 exhibit, but the email itself -- when did you see it  
4 for the first time?

5 A. Oh, just in preparation for the case.

6 Q. Okay. So you see that it was sent December  
7 14 --

8 A. I do.

9 Q. -- of 2021? You did not see it in that  
10 timeframe, it sounds like? Or did you?

11 A. No.

12 Q. Do you know whether or not your office  
13 responded to this email?

14 A. I don't believe so.

15 Q. Do you know why it was not responded to?

16 A. Can you make it just a little bit bigger,  
17 please?

18 Q. Yes. And tell me if you need me to scroll  
19 up or down.

20 A. No. Okay. So I know that we received an  
21 inquiry from a media outlet, ProPublica, and that's  
22 kind of where this "discrepancy" comment was brought  
23 to our attention. So I think they kind of came in  
24 simultaneously. And we did look into the data. But  
25 I don't believe a formal response to this email, to

1 my knowledge, was sent.

2 Q. Okay. Now, was there an intentional  
3 decision made not to respond to this email as far as  
4 you know?

5 A. No.

6 Q. It sounds like it was wrapped up with the  
7 ProPublica discussion or at least -- you did work  
8 with ProPublica; correct?

9 A. We did.

10 Q. So you mentioned the discrepancy, and  
11 that's the second full paragraph here. Are you  
12 familiar, when I say discrepancy, you know what I  
13 mean?

14 A. Yes.

15 Q. So again, according to VoteRef, there is a  
16 difference between the reported number of voters who  
17 voted on November 3, 2020, and then the number of  
18 people that were on the file that you provided in  
19 April to Local Labs, with an indication that they had  
20 voted in that election; correct?

21 A. Correct.

22 Q. And the second number was smaller by 3,844  
23 individuals. Is that your understanding?

24 A. Yes.

25 Q. Okay. So tell me, did you look into this

1 so-called discrepancy?

2 A. We did. At the time, I reached out to our  
3 technical team, and asked if they could review the  
4 data to just kind of confirm that it was essentially  
5 based off of routine list maintenance activities.  
6 So, you know, I have an understanding of that  
7 process, so that was immediately where my mind went.  
8 But we did ask the data to be reviewed, and it was  
9 confirmed.

10 Q. All right. So when you say "it was  
11 confirmed," what was the outcome of that review?

12 A. Essentially, there is a valid reason for  
13 there to be a difference in the numbers, and it is  
14 not, in fact, a discrepancy or a recordkeeping issue.

15 Q. Okay. All right. And then, if we can -- I  
16 can take you to Plaintiffs' Exhibit 4. There we go.  
17 All right. And you talked about this with Mr. Greim.  
18 But really quickly. So if we go to the second page,  
19 he's referring to this February 15th email as a  
20 records request. Looking at this email, is that a  
21 valid IPRA request under New Mexico law? IPRA being  
22 Inspection of Public Records Act.

23 A. It's not a valid IPRA request.

24 Q. Okay. Is it a request under -- is it an  
25 affidavit under 5.5 that is necessary to receive



1 voter data?

2 A. It's not.

3 Q. And so, on March 11, when Mr. Rostock said  
4 to you, "Per Dylan's contact with the AG, we're not  
5 fulfilling records requests from VoteRef." So Dylan  
6 is who?

7 A. Our general counsel.

8 Q. So do you know who Mr. Rostock is actually  
9 referring to at the AG's Office?

10 A. No.

11 Q. And just to clarify, when you said earlier  
12 we would need to ask the Attorney General, you don't  
13 mean actually Attorney General Balderas; right?

14 A. I don't. I mean the office.

15 Q. Someone from the Attorney General's Office?

16 A. Correct.

17 Q. And so you, yourself, though, did not  
18 receive that guidance from the Attorney General's  
19 Office?

20 A. Not directly, no.

21 Q. Okay, he's conveying that to you and to  
22 Ms. Pino?

23 A. Yes.

24 Q. All right. So was the fact that this  
25 February 15th email is not a valid IPRA request, and

1 not a valid affidavit under Section 5.5, did those  
2 factors play into your decision to follow the advice  
3 that's been conveyed to you not to respond?

4 A. Correct.

5 Q. Okay. But -- and I'll take you to, if I  
6 may, Plaintiffs' Exhibit -- I'm sorry, not  
7 Plaintiffs' Exhibit 10, but a document --

8 MS. SERAFIMOVA: Mr. Greim, I want to put  
9 your declaration in front of the witness. Any  
10 objection?

11 MR. GREIM: No, no objection.

12 Q. Okay. So I'm going to pull up what was  
13 filed, I believe, it was filed -- correct me if I'm  
14 wrong -- yesterday?

15 MR. GREIM: It was just served. I don't  
16 think we filed it.

17 MS. SERAFIMOVA: Your Honor, may I pull up  
18 the document?

19 THE COURT: Yeah, I don't think there is  
20 any objection to that.

21 Q. Okay. All right. So the February 15th was  
22 not an IPRA request, and it was not a valid records  
23 request. But, as Mr. Greim admits in this document,  
24 they did submit an IPRA request on April 26th; right?

25 A. Right.

1 Q. And your office did respond to that IPRA  
2 request; right?

3 A. We would respond to any IPRA request, yes.

4 Q. And here, in B, Mr. Greim admits that you  
5 did respond?

6 A. Yes.

7 Q. And, in fact, he says that the documents he  
8 received were turning to Exhibits Plaintiffs' 4, 6,  
9 7, 8, and 9; correct?

10 A. Yes.

11 Q. You didn't treat VRF any differently than  
12 you would anybody else who files or submits a valid  
13 IPRA request; is that true?

14 A. That is true.

15 Q. Now, if we can talk about the actual file  
16 that Local Labs received from your office. That file  
17 is dated -- believe it's April 12th, but Mr. Greim  
18 said April 13th -- either way, one of those dates;  
19 right?

20 A. I don't have those dates, but that sounds  
21 reasonable.

22 Q. Okay. So as of today, that's almost  
23 exactly 14 months. Would you agree with that?

24 A. Yes.

25 Q. Do the voter rolls change?

1 A. Yes, they do.

2 Q. How often?

3 A. It's a dynamic file. So, you know, we are  
4 either receiving new information or updating  
5 information on a very regular basis. And when I say  
6 "we," it is really happening at the county clerk  
7 level.

8 Q. So is it weekly? Monthly? How frequently  
9 would you say? The smallest increments.

10 A. You know, things can be updated every day.

11 Q. Okay. Can you explain to us how that  
12 happens?

13 A. Sure. So if we receive a new registration  
14 that is something that would need to be processed.  
15 During the election, we have the opportunity for  
16 registering prior to voting. So that's another place  
17 where that record would be updated even during an  
18 election.

19 Other than that, we have routine list  
20 maintenance activities. So if somebody -- we refer  
21 to it as automatic voter registration. So if I make  
22 a transaction at the Motor Vehicle Division in the  
23 State of New Mexico, I'm offered an opportunity to  
24 either register, or in some cases I can provide  
25 updated information to my current registration.

1 We also receive regular files from the  
2 Department of Health and the Department of  
3 Corrections. So if there is a voter that has become  
4 deceased, that information is updated, or if there is  
5 a either felony conviction or a felony satisfaction,  
6 that information is also updated. We participate as  
7 a member of ERIC, which is an organization, really --  
8 sorry, a group of states that participate in list  
9 maintenance activity.

10 So we share information across member  
11 states, Motor Vehicle Division, and voter  
12 registration data, so that there is a comparison  
13 done. So if a voter has moved across a state, we can  
14 do outreach to those voters and ask them to also  
15 update their information.

16 And then county clerks can also just review  
17 obituaries within their jurisdiction to make updates  
18 to a voter being deceased. Part of ERIC is also just  
19 reaching out to -- I mentioned cross-state, but we  
20 also do review of any in-state potential duplication  
21 due to data entry, or if a voter has just moved  
22 across a county.

23 So, you know, New Mexico has many policies  
24 that are pro list maintenance and working every day  
25 to make sure that we are keeping our information as

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1 updated as possible.

2 Q. Okay. And if I may show you stipulated  
3 Exhibit F.

4 A. And I was remiss in my list, Olga. So just  
5 for the record, you know, we are required to follow  
6 federal law. And we conduct a program under NVRA  
7 also that will prompt a cancellation of a voter if  
8 they have not -- if we've received official mail  
9 that's been returned, their record will be flagged.  
10 And if it remains flagged through two general  
11 election cycles, and there has been no participation  
12 by that voter or any update to their record, in that  
13 case there is a cancellation process that would also  
14 move forward.

15 Q. Okay. And then are you familiar -- this is  
16 Exhibit F -- are you familiar with this document?

17 A. This appears to be from our website.

18 Q. Okay. Have you reviewed this before?

19 A. Have ever used -- I'm sorry?

20 Q. Have you reviewed it?

21 A. Oh, I have seen the exhibits in preparation  
22 for this hearing.

23 Q. So it's a summary of what you just shared  
24 with us, right, it's a summary of that process?

25 A. Yes. We push that information out.

1           Q.     Okay. Now, if someone is just looking at,  
2     you know, a database that contains the file that you  
3     provide, so just, you know, voter and all the  
4     information, just that database, would they know that  
5     that's a dynamic file that can look different from  
6     day to day?

7           A.     No.

8           Q.     And if a voter is looking at -- or if a  
9     citizen, anybody online, is looking at stale voter  
10    data, could they incorrectly conclude that there is  
11    voter fraud, even though there isn't any?

12          A.     They wouldn't be looking at accurate data.

13          Q.     And could they incorrectly conclude that  
14    there are inaccuracies in your recordkeeping even  
15    though there aren't any?

16                 MR. GREIM: Objection, calls for  
17    speculation, and leading.

18                 THE COURT: Well, if she can answer the  
19    question, I'll allow it. Try not to lead. Let the  
20    witness answer the question. But if she can answer  
21    the question, I'll allow it. Overruled.

22          A.     Reviewing stale, outdated, inaccurate,  
23    incomplete data, all of that provides an opportunity  
24    for the analysis to be, you know, false, and for  
25    there to be confusion created from that analysis, if

1 individuals don't have a full picture of complete and  
2 accurate data.

3 Q. Okay. If I may take us to Plaintiffs' 1,  
4 which is a press release that was released by Voter  
5 Reference, VRF. So if you look at where my cursor  
6 is, "These discrepancies" -- do you see that  
7 sentence?

8 A. Yes.

9 Q. And again, so this is dated December 16,  
10 2021?

11 A. Yes.

12 Q. And the data you provided to Local Labs was  
13 April of 2021?

14 A. Correct.

15 Q. So a good six, seven months in between;  
16 right?

17 A. Six months, yes.

18 Q. All right. So if you read that sentence --  
19 and I'll do it for the record.

20 A. Actually --

21 Q. "These discrepancies" --

22 A. Did you say April to December?

23 Q. Yes. It's more, you're right; it's like  
24 eight.

25 A. Yes.



1 Q. So here, Ms. Swoboda testified that this  
2 was her conclusion; right? She concluded, "These  
3 discrepancies don't necessary indicate fraud, but the  
4 differences between the voter list and the election  
5 canvass indicates, at the very least, issues with  
6 recordkeeping." Do you see that?

7 A. I do.

8 Q. Would you agree with me that this is one  
9 example of a person looking at stale data and  
10 reaching incorrect conclusions?

11 A. Yeah. I mean, April to December, we have  
12 eight months' worth of updates that are not being  
13 analyzed and not being included.

14 Q. Then I'd like to show you State's Exhibit  
15 8.

16 MS. SERAFIMOVA: Mr. Greim, I know we added  
17 it to the list this morning, so let me know if you  
18 have any disagreement with me putting that on --

19 MR. GREIM: No, go ahead. We don't know  
20 what it is yet, but we've seen it. So go ahead.

21 Q. Okay. So this is just a printout of the  
22 VoteRef website, Colorado data, a random person on  
23 that database.

24 And so, Ms. Vigil, so this particular  
25 person happens to have no record of vote history.

1 But if I can draw your attention to the first  
2 sentence. It says, "The information on this website  
3 about this voter, including records of this voter's  
4 voting history, was provided to VRF by the Colorado  
5 Secretary of State on March 29, 2021." Do you see  
6 that?

7 A. Yes, I do.

8 Q. So I pulled this up this morning; you see  
9 up here, June 15, 2022; correct, and shared it with  
10 you. So, as of today, this information is over a  
11 year old; right? It's more like 15 months old, more  
12 or less?

13 A. It is.

14 Q. And you've looked at this language that  
15 they provide, have you?

16 A. Yes.

17 Q. I should ask have you?

18 A. Yes.

19 Q. Does it explain anywhere what this date,  
20 March 29th, actually means? Does it say that the  
21 data is dynamic anywhere?

22 A. No. It provides the date as to when it was  
23 received, but there is no information as to why that  
24 is relevant.

25 Q. Okay. And does it provide any information

1 as to what the Colorado Secretary of State's Office  
2 does to update the information?

3 A. There is no information that would give  
4 anyone on this website an understanding of how to  
5 really understand the data.

6 Q. Okay. And then, if someone obtains a file  
7 from you, and then decides to -- a voter data file --  
8 and then decides to upload it to a website, could  
9 they, in theory, manipulate that data prior to  
10 uploading it?

11 A. Just that last part, if you can repeat.

12 Q. With the proper skills, could they  
13 manipulate that data before uploading it?

14 A. Sure. I mean, the file that we provide is  
15 in a format that it can be edited.

16 Q. And then, if someone were to obtain the  
17 data from -- your data from someone else's website,  
18 could they then alter it and redistribute it in an  
19 altered state?

20 A. Yes. We would have no control, once it was  
21 made available online, as to how it was manipulated  
22 and then shared out.

23 Q. And again, do you think that could lead  
24 people to believe that there is voter fraud or other  
25 issues that are actually nonexistent?

1           A.    I think that giving, again, inaccurate,  
2 incomplete information, it has a great potential to  
3 create further confusion in the process. And I think  
4 it has the potential to really spread misinformation  
5 to the public.

6           Q.    And then, if someone obtains -- let's say  
7 someone files an affidavit and obtains my personal  
8 address, right, and then are they, by signing the  
9 affidavit, is there a criminal penalty attached to  
10 misusing my address in any way?

11          A.    Did you say if I do not sign the affidavit?

12          Q.    No. I'm sorry, let me rephrase. If  
13 someone does sign an affidavit, and they obtain voter  
14 data, is there a criminal penalty that attaches to  
15 any misuse of that voter data?

16          A.    Yes.

17          Q.    And that threat of criminal prosecution,  
18 would you agree that, presumably, it acts as a  
19 deterrent to the data being misused?

20          A.    I think that's a fair analysis.

21          Q.    That's the whole point; right?

22                MR. GREIM: Your Honor, just objection,  
23 leading; calling for speculation.

24                THE COURT: Well, I'm going to sustain.

25          Q.    All right. So if someone obtains the data

1 not by signing an affidavit, not through your  
2 regulatory process, but from a website or from  
3 someone else, a third party, are you aware if there  
4 is any criminal penalty under the New Mexico Election  
5 Code that would apply to that person?

6 A. Again, I had this conversation, this issue  
7 has been discussed. And my understanding of the  
8 legal analysis is that, the affidavit is required,  
9 one; but without that, they are not subject to the  
10 penalties, the criminal penalties in particular.

11 Q. Okay. If they misuse the data, and other  
12 than reposting it again and going under 5.6?

13 A. Correct.

14 Q. Okay. So the same question if someone  
15 obtains the data from a website like VoteRef, and  
16 then goes on to sell that for a commercial purpose,  
17 do you believe there is any criminal liability that  
18 could potentially apply to them under the Election  
19 Code?

20 A. My understanding is that there is a  
21 criminal penalty for anyone that uses it unlawfully.

22 Q. Okay. But if they don't fall under 5.6,  
23 meaning they don't -- well, I take that back. Thank  
24 you, strike that.

25 Okay. And now -- and thank you, it's been

1 a long morning, and I appreciate your continued  
2 attention.

3 The final topic. Under the Election Code,  
4 can I -- in order to register to vote, can I provide  
5 a P.O. Box address?

6 A. No. You are required to provide a physical  
7 address. You do have the option to also provide a  
8 mailing address. But the physical is required.

9 Q. Okay. Can it be my work address?

10 A. No, it needs to be your residential  
11 address.

12 Q. Okay. So if I want to keep my actual  
13 residential address, where my children live, a  
14 secret, I cannot do that in order to -- meaning, if I  
15 want to also register to vote, I have to provide it;  
16 right?

17 A. You have to provide your physical address  
18 in order to register, that's correct.

19 Q. And then, finally -- and I do promise --  
20 almost two more questions. If someone submits an  
21 affidavit, they do have to pay a fee, right, for the  
22 data?

23 A. Yes.

24 Q. But if someone downloads the data from  
25 someone else's website, there is no way for you to

1 collect a fee; is that right?

2 A. That's correct.

3 Q. And then truly the final question: Has  
4 your office retaliated against VRF in any way since  
5 you've become aware of them?

6 A. No.

7 MS. SERAFIMOVA: Nothing further. Thank  
8 you.

9 THE COURT: Thank you, Ms. Serafimova.  
10 Mr. Greim, do you have redirect of Ms.  
11 Vigil?

12 MR. GREIM: No, Your Honor, we don't have  
13 any redirect.

14 THE COURT: All right. Ms. Vigil, you may  
15 step down. Is there any reason that Ms. Vigil cannot  
16 be excused from the proceedings, Mr. Greim?

17 MR. GREIM: No.

18 THE COURT: Can she be excused,  
19 Ms. Serafimova?

20 MS. SERAFIMOVA: Yes, Your Honor.

21 THE COURT: All right. You are excused  
22 from the proceedings. Thank you for your testimony.

23 All right. Mr. Greim, do you have your  
24 next witness or evidence?

25 MR. GREIM: Your Honor, the next witness

1 was -- we were going to have Ms. Serafimova call  
2 Ms. Pino, and then I was just going to kind of cross  
3 and direct at the same time. We've got about 11  
4 minutes left on our regular prior setting. And so I  
5 wanted to suggest this: I wanted to suggest that we  
6 just -- I mean, I think we've got a full record here,  
7 I don't know what itch we haven't scratched yet,  
8 other than walking through the criminal referral.

9 But, Your Honor, I think everything can be  
10 handled in, you know, proposed findings and  
11 conclusions. And I would like to suggest that each  
12 party just agree to admit the other's exhibits for  
13 purposes of this, and that we use what little time we  
14 have left maybe just for some closing remarks, and  
15 then we can submit something to you in writing.

16 THE COURT: How do you feel about that,  
17 Ms. Serafimova?

18 MS. SERAFIMOVA: Well, Your Honor, again,  
19 the reason we ran out of time is because Mr. Greim  
20 promised a 20 minute direct/cross, and took an hour  
21 and a half. I have three pages of questions for Ms.  
22 Pino. And they subpoenaed her. We had to brief, and  
23 to have a motion hearing on whether or not she has to  
24 appear. And I think it's very unfair at this point  
25 to say that I don't get to ask my questions. We had



1     agreed to a witness list. I relied on that  
2     agreement. She's here.

3             THE COURT: Well, let me ask Mr. Greim.  
4     She's not going to go along with your proposal. Do  
5     you want to call her, or do you want to let  
6     Ms. Serafimova call her?

7             MR. GREIM: I'll let Ms. Serafimova call  
8     her, and I'll be ready to cross when it's time.

9             THE COURT: All right. Do you have, Mr.  
10    Greim, any further witnesses or evidence you wish to  
11    present?

12            MR. GREIM: Yeah, the only thing I'd say  
13    is, I do have some evidence I want to present through  
14    my cross/direct of Ms. Pino. But it will go quicker  
15    if I can do those all at once in responding to what  
16    she does. Because I think I have less than she does.

17            THE COURT: Is that acceptable,  
18    Ms. Serafimova?

19            MS. SERAFIMOVA: Well, I mean, he can use  
20    his cross however he needs to. I'm not sure what I'm  
21    agreeing to.

22            THE COURT: Well, I think what he's doing  
23    is he's saying he's not going to do his direct right  
24    now. He's going to do his direct and cross as part  
25    of his cross. Is that acceptable to you?

1 MS. SERAFIMOVA: Well, Your Honor, that was  
2 our agreement for me, but then I was not allowed to  
3 lead. So, no, it's not acceptable to me.

4 THE COURT: Well, these are adverse  
5 witnesses to Mr. Greim, so that's the reason he can  
6 lead. They're not adverse to you. And I need to  
7 hear from the witness rather than you. You can make  
8 the arguments later.

9 Mr. Greim, I think you better just call Ms.  
10 Pino and do your direct.

11 MR. GREIM: Okay. I'm just afraid we're  
12 going to duplicate, but that's fine. I'll call her  
13 now.

14 THE COURT: All right. Ms. Pino, can you  
15 hear us? You're muted, Ms. Pino.

16 THE WITNESS: Sorry about that. Yes.

17 THE COURT: All right. If you will stand  
18 and raise your right hand, my courtroom deputy,  
19 Ms. Rotonda, will swear you in and then we'll take  
20 your evidence under oath.

21

22

23

24

25

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1 SHARON PINO,  
2 after having been first duly sworn under oath,  
3 was questioned and testified as follows:

4 DIRECT EXAMINATION

5 THE COURT: All right. Ms. Pino, you may  
6 be seated.

7 Mr. Greim, if you wish to conduct direct  
8 examination of Ms. Pino, you may do so at this time.

9 BY MR. GREIM:

10 Q. Ms. Pino, what is your title?

11 A. I am Deputy Secretary of State.

12 Q. And what are your duties?

13 A. I, essentially, am also the Chief of Staff,  
14 so I run the office, help make any decisions, policy  
15 decisions or otherwise, direct projects, oversee all  
16 of the directors of the office.

17 Q. Who do you report to?

18 A. I report to Secretary of State Maggie  
19 Toulouse Oliver.

20 Q. Who directly reports to you?

21 A. All of the directors directly report to me,  
22 which is our director of business services, our  
23 elections director, our director of IT, our human  
24 relations manager, our general counsel, and our  
25 communications director.

1 Q. Okay. Does Ms. Vigil report to you?

2 A. Yes.

3 Q. Okay. I just want to skip right into sort  
4 of a key document in this case. Did there come a  
5 time when you drafted a criminal referral for VRF to  
6 the Attorney General?

7 A. Yes.

8 Q. Okay. And did anyone aid you in preparing  
9 that draft?

10 A. Yes, the draft was prepared by our general  
11 counsel, and submitted to me for signature, for  
12 review and signature.

13 Q. And did you satisfy yourself that it was  
14 fully accurate?

15 A. Yes.

16 Q. And the facts were true to the best of your  
17 knowledge and information?

18 A. Yes.

19 Q. And the legal arguments you made in that  
20 were nonfrivolous; correct?

21 A. Yes.

22 Q. You believed, and believe now, they're  
23 absolutely correct under New Mexico law?

24 A. Yes.

25 Q. You wouldn't change any of the arguments

1 you made in the letter, would you?

2 A. I don't believe so, no.

3 Q. Did the Secretary approve it as well?

4 A. No.

5 Q. Who else was involved in drafting it other  
6 than you and the general counsel?

7 A. I believe our general counsel gathered  
8 information from any of our staff that were involved,  
9 or had information relating to that referral.

10 Q. Is there any important information that  
11 your office had at the time, that you now know your  
12 office had at the time, that was not included in the  
13 letter?

14 A. I don't believe so. Nothing comes to mind.

15 Q. And have you developed any additional  
16 theories of criminal liability since the letter was  
17 drafted?

18 A. No.

19 Q. I'm going to go ahead and share this. I'm  
20 going to show you what we've marked as Exhibit C,  
21 it's a Joint Exhibit. And yeah, this version is  
22 missing the attachments, I'm just going to tell you.  
23 We have an updated Exhibit C. This one doesn't have  
24 the attachments. But as I scroll through, do you  
25 recognize this as a true and correct copy, minus the

1 attachments of the referral?

2 A. Yes.

3 Q. And the three attachments were  
4 communication to a Mr. Lippert from the Secretary of  
5 State regarding the voter data request, Mr. Lippert's  
6 signed authorization form on behalf of Local Labs,  
7 and a screen shot of some website clip from  
8 VoteRef.com. Do you recall that?

9 A. Yes.

10 Q. I don't know that we need to refer to  
11 those, so we'll just keep using this version that we  
12 have up here.

13 Now, let's see, the first place I want to  
14 direct you is the opening paragraph. In the very  
15 last sentence you say, "Swift action is needed as  
16 voter data can quickly be manipulated and used to  
17 spread election misinformation." Did I say that  
18 correctly?

19 A. Yes.

20 Q. As of this point, had New Mexico had any  
21 experience with people using voter data to spread  
22 election misinformation?

23 A. Yes.

24 Q. Okay. Who had done that?

25 A. There was a later referral that was also

1 made to the Attorney General's Office regarding New  
2 Mexico Audit Force, and again, their use and  
3 manipulating of voter data that -- I don't, to this  
4 day, know how they got the voter data -- but it being  
5 manipulated and used to spread election  
6 misinformation.

7 Q. Okay. And I understand that. But my  
8 question to you is about at the time you wrote this  
9 letter?

10 A. At the time we wrote the letter, no.

11 Q. Okay. And were you concerned that VRF was  
12 about to engage in spreading election misinformation?

13 A. Yes. By placing all of the data on a  
14 publicly available website.

15 Q. And so did you believe that the placing of  
16 the data on the website constituted misinformation?

17 A. No.

18 Q. Okay. So what was it about putting the  
19 data on the website that was going to spread election  
20 misinformation?

21 A. It had the potential to.

22 Q. Okay.

23 A. Again, because when you put the data out  
24 there, it can be manipulated in any way to do so.

25 Q. Now, you have no information that VRF has

1 ever manipulated its data, do you?

2 A. No.

3 Q. At the time you wrote this letter, you had  
4 no reason to believe that VRF was about to manipulate  
5 the data, did you?

6 A. Only the potential that it could be  
7 manipulated, yes.

8 Q. Right. And I mean, anybody who receives  
9 the data can manipulate the data; correct?

10 A. There are strict provisions regarding the  
11 use of the data that you legally obtain.

12 Q. But there was nothing particular by VRF  
13 that caused you to think that it was about to  
14 manipulate the data or spread misinformation?

15 A. I had none of that information at the time.  
16 That's why we made the referral to the Attorney  
17 General's Office, so they could thoroughly  
18 investigate.

19 Q. Now, by the time of this letter, your  
20 office had actually already accused VRF of spreading  
21 misinformation; correct?

22 A. You'll have to tell me exactly. I don't  
23 know specifically what you're referring to.

24 Q. Okay. Well, we'll come back to that. By  
25 this point, VRF had stated in a press release that



1       there were discrepancies that could not be explained  
2       between the data -- I'm sorry, the election canvass  
3       results and the data as of April 13, 2021; correct?

4           A.     I am aware of a press release put out by  
5       VRF. I'm not aware of the dates and how that  
6       coincided with this letter. I don't recall that.

7           Q.     How did your office first become aware of  
8       VRF?

9           A.     I personally became -- just from staff in  
10      our office making me aware that the data had been  
11      placed on a publicly available website.

12          Q.     Do you recall, have you ever heard of an  
13      outfit called ProPublica?

14          A.     Yes.

15          Q.     What are they?

16          A.     I believe it's a news organization, or some  
17      kind of reporter.

18          Q.     Okay. Are you aware that they're a  
19      progressive media and advocacy group?

20          A.     No, I'm not aware of that.

21          Q.     Okay. So as far as you're concerned, they  
22      have no sort of partisan lean at all; is that  
23      correct?

24          A.     I'm not aware of that, no.

25          Q.     Okay. Had you heard of them before this?

1 A. Not before this, that I can recall.

2 Again -- yeah, I hadn't.

3 Q. Now, did Mr. Curtas come to you and say  
4 that a ProPublica reporter reached out to him?

5 A. Mr. Curtas, yes. We meet weekly, and he  
6 did mention that ProPublica had reached out to him.

7 Q. And did you work with Mr. -- I've been  
8 saying his name wrong this whole time, by the way --  
9 did you work with Mr. Curtas on his response to  
10 ProPublica?

11 A. No.

12 Q. Do you know who reviewed or approved any of  
13 his responses?

14 A. No. I mean, I don't -- I think he might  
15 have -- typically, when he gets any kind of media  
16 request, he'll reach out to staff within the office  
17 who might have the information that he's looking for.  
18 You know, everyone who is able contributes, and he  
19 puts that together and provides the response to the  
20 media request. But I typically do not micromanage  
21 exactly what his final responses are.

22 Q. Does he get legal review within the office?

23 A. If it's needed, yes. He will usually look  
24 to our general counsel, or sometimes to me, just to  
25 verify if something is accurate. And I don't recall

1 him doing that related to this.

2 Q. Is it possible he did and you don't  
3 remember or you just don't think he did?

4 A. It's certainly possible I do not remember.

5 Q. So after the outreach from ProPublica, did  
6 the Secretary of State's Office do anything to gather  
7 facts to determine whether there was a violation of  
8 the law occurring?

9 A. Related to data being placed on a publicly  
10 available website, yes.

11 Q. Okay. And who oversaw that response?

12 A. Our general counsel.

13 Q. And so who is it -- well, let me ask you  
14 this: Did counsel for the Secretary of State  
15 determine that it was unlawful to place the voter  
16 data on the website?

17 A. I mean, the referral was prepared, so, yes,  
18 we did make a determination that there was enough  
19 there of potential violation of law. Again, that's  
20 not for our office to determine. That's why, if we  
21 have facts supporting a potential violation of law,  
22 we make a referral to the Attorney General's Office  
23 for that investigation or review. We don't have  
24 investigators in our office.

25 Q. Okay. Well, let's just dive into it. I'm

1 going to turn to the section on criminal violations.

2 It's page 2.

3 A. Okay.

4 Q. And so the first thing that's cited here,  
5 the very first thing, is 1-4-5.5C. And you'll see  
6 that -- everybody else is very familiar with this in  
7 our hearing, but this is the affidavit requirement;  
8 correct?

9 A. Yeah, that is how you legally go about  
10 making a request for voter data.

11 Q. And the conclusion of your paragraph is  
12 that, "We do not believe providing this personal  
13 voter data on a private website that intends to  
14 spread misinformation about the 2020 general election  
15 meets the definition of appropriate use, as either  
16 for a 'governmental purpose, election related, or  
17 election campaign purposes.'" Did I read that right?

18 A. Yes, that has to do with, again --

19 Q. I'll have another question for you, okay?

20 A. Sure. No problem.

21 Q. And so you've listed three purposes there.  
22 Where did you pull those three purposes from?

23 A. Those are what a person has to assert  
24 within 1-4-5, as a valid purpose for requesting the  
25 information, the voter data. It's what you have to

1     assert: You know, I'm aware of all these provisions  
2     legally, and will abide by them in requesting this  
3     voter data.

4           Q. Got it. And on the form, at this time, you  
5     could actually check either "governmental, election  
6     related, or election campaign purposes"; correct?

7           A. I believe so, yes.

8           Q. All right. How was "election related  
9     "different from "election campaign purposes"? You've  
10    listed them out separately here.

11          A. They're not. I mean, it's essentially the  
12    same thing. And when you go to the definitions, I  
13    believe -- and I'd have to take a look at the  
14    statute -- but there is only the two definitions.  
15    There is the election campaign purposes and the  
16    governmental purposes. So, in essence, "election  
17    related" is election campaign purposes.

18          Q. Now, earlier you told us that you had a  
19    factual basis for everything that's put into this  
20    letter. Do you recall that?

21          A. Yes.

22          Q. I'm going to ask you, in this last sentence  
23    you say, "Providing this personal voter data on a  
24    private website that intends to spread misinformation  
25    about the 2020 general election." So what

1 information did you have that VRF intended to spread  
2 misinformation about the 2020 general election?

3 A. It's only what it could potentially be used  
4 for, not information. And as I've stated before, I  
5 don't think at the time this request was made, or  
6 this referral was made, there was any information  
7 related specifically to VRF.

8 Those provisions specifically were cited  
9 more for the requester of the data. Because, when a  
10 person requests the data, they're signing the  
11 affidavit that they're going to abide by all of these  
12 provisions. Certainly, if they've submitted --  
13 intentionally submitted a false affidavit, there  
14 could be some liability for the requester.

15 Q. Well, at this point, you knew VRF had it up  
16 on its website, you knew their identity; correct?

17 A. Yes. And the referral related to VRF more  
18 how they were using the data, which is a completely  
19 different statute.

20 Q. Well, we'll get to that. My question --  
21 I'm going to stay on this sentence here for a second.  
22 How is it that intending to spread misinformation  
23 about the general election brings VRF's use outside  
24 of governmental purpose? Let's stick with that one  
25 first.

1           A.     Again, that wasn't my determination to  
2     make. And again, I didn't prepare this. But I'm  
3     assuming when these were laid out in the letter by  
4     our counsel it was simply to cite all of the  
5     provisions of the statute. When we looked  
6     specifically at VRF, and when I read this referral  
7     and reviewed the referral and signed the referral, it  
8     had more to do related to VRF with the unlawful  
9     use --

10           Q.     Okay.

11           A.     -- of the voter data, which is again  
12     putting it on a publicly available website where it  
13     could be manipulated.

14           Q.     Okay, my question is different, okay? My  
15     question is: What is it about spreading  
16     misinformation about the general election that brings  
17     it outside of this first of the three uses here,  
18     governmental purpose? Why does that not comport with  
19     governmental purpose?

20           A.     Again, I think that's misciting -- and can  
21     I take a look at the statute, because there is a  
22     definition of governmental purpose under the statute.

23           Q.     Sure. Yeah, do you have it there in front  
24     of you?

25           A.     Let me get my book.

1 Q. I, unfortunately, don't have an exhibit  
2 that actually has the statutes in there.

3 A. The definition of governmental purposes  
4 means "noncommercial purposes relating in any way to  
5 the structure, operation, or decision making of a  
6 federal, state, or local government." So that is  
7 what brings it outside of that definition of  
8 government purpose.

9 Q. Is it because it's misinformation?

10 A. It's because it's information. And, again,  
11 it does not relate in any way to the structure,  
12 operation, or decision making of federal, state, or  
13 local government.

14 Q. What is this information that you are  
15 concerned about? Was it about the voter rolls not  
16 being properly maintained?

17 A. I think, as I've stated, if the data  
18 potentially can be manipulated in any way that can be  
19 utilized to spread misinformation based on the fact  
20 that it's been manipulated.

21 Q. Okay. Let's move to the next one --  
22 actually, we'll cover them together, because you've  
23 testified that they're really referring to the same  
24 thing.

25 A. Um-hum.



1 Q. Okay. How is misinformation about the 2020  
2 general election not election or election campaign  
3 related?

4 A. Because, again, election campaign, it's  
5 essentially the same thing. And that's why election  
6 campaign purposes as defined under E, means "relating  
7 in any way to a campaign in an election conducted by  
8 a federal, state, or local government. So a  
9 campaign. Campaign uses, such as: I'm getting this  
10 voter data so I can send out information on a  
11 candidate or an issue specifically reaching out to  
12 voters, it's being used in some way -- or again, to  
13 conduct canvassing activities. It's somehow being  
14 utilized for the campaign.

15 Q. So is it your position that using the data  
16 to talk about the operation of the election itself is  
17 not within election related or election campaign  
18 purposes?

19 A. I don't think that that's my position at  
20 all. That's certainly one interpretation.

21 Q. Okay. Well, I'm just trying to understand  
22 why misinformation about the 2020 general election is  
23 not election related?

24 A. And I'm not saying that it's not. What I'm  
25 saying is what was intended in this letter when we're

1 saying that intends to spread misinformation about  
2 the 2020 election, meaning that the data can be  
3 manipulated to spread that misinformation.

4 Q. Okay. But the specific sentence, it says,  
5 "We do not believe." That includes you; right?

6 A. Yes.

7 Q. You reviewed this before you signed it.  
8 You said you were comfortable with the facts, you  
9 were comfortable with the legal theories; right?

10 A. Yes.

11 Q. Okay. So I'm sorry, I want to move on from  
12 this point, but I want to get an answer to this.  
13 Let's just replace "misinformation" with -- you know,  
14 let's call it communication of data that you believe  
15 has been manipulated, all right? So, first of all,  
16 you're telling us that you don't have -- at the time  
17 you wrote this letter, you had no information --

18 A. I did not write the letter.

19 Q. So at the time you signed the letter --

20 A. Um-hum.

21 Q. -- right? You had no information that VRF  
22 had actually done that; right?

23 A. I personally did not. Like I said, the  
24 information in the letter, we had some staff that  
25 looked at the website and put together the letter.

1 So, no, I did not personally have any information at  
2 the time that -- again, it was -- or VRF had  
3 conducted any kind of misinformation or had  
4 manipulated the data.

5 Q. Okay. Are you now suggesting that staff  
6 did, and you just didn't know about it?

7 A. That may be the case, like I said. But  
8 again, if there is a potential to manipulate the data  
9 to spread misinformation, that does not fit the  
10 statutory definitions of government purpose or  
11 election campaign purposes. And that was my  
12 understanding when I reviewed and signed the letter.

13 Q. Okay. And you still believe that today;  
14 correct?

15 A. I still believe that today.

16 THE COURT: Mr. Greim, we've been going  
17 another hour and a half, so I'm going to have to give  
18 Ms. Bean a break here. So we'll be in recess for  
19 about 15 minutes.

20 (The Court stood in recess.)

21 THE COURT: All right. Ms. Pino, I'll  
22 remind you you're still under oath.

23 Mr. Greim, if you wish to continue your  
24 direct examination of Ms. Pino, you may do so at this  
25 time.

1 MR. GREIM: Thank you, Your Honor.

2 Q. Ms. Pino, you're on mute.

3 A. Sorry about that.

4 Q. So the letter we've been looking at is --  
5 I'm sorry, is Olga here? There she is, okay.

6 The letter we've been looking at is dated  
7 December 20.

8 A. Um-hum.

9 Q. Now, I want you to keep that in mind. I'm  
10 going to now go to another document. This is  
11 Plaintiffs' P8, okay, Plaintiffs' Exhibit 8. And I  
12 need to share it. Okay, there we go.

13 So we're on P8. And you'll see it's an  
14 email chain that begins with an email way back on  
15 March 2, between Mr. Curtas and Megan O'Matz at  
16 ProPublica.

17 I'm going to take us back in time as I  
18 scroll down here. Scrolling us back, I'm going to  
19 stop at this email here, on Friday, December 17. So  
20 this is a Friday. That referral went out on Monday;  
21 right?

22 A. Yes, that appears are the dates, yes.  
23 Yeah, Monday, you're right.

24 Q. So she asks him -- they've been going back  
25 and forth. And she says, "Thank you, Alex, much

1 appreciated. Question: Can you elaborate on how the  
2 publication of voter data online may violate state  
3 law?" Then in parentheses she says, "VoteRef likely  
4 will argue that they are using it for election and  
5 research purposes. Thank you again, Megan." Did I  
6 read that correctly?

7 A. Yes.

8 Q. And then we'll see Alex answers on Tuesday,  
9 the 21st, so the day after, now, the referral has  
10 gone out.

11 A. Um-hum.

12 Q. And you'll see he refers back to that  
13 referral. So this is his response. "Hey, Megan, the  
14 issue relates to the transfer and publication of the  
15 voter data." Then he says, "This is the crux: We do  
16 not believe providing this personal voter data on a  
17 private website that intends to spread misinformation  
18 about the 2020 general election meets the definition  
19 of appropriate use as either for a governmental  
20 purpose, election related, or election campaign  
21 purposes." Did I read that right?

22 A. Yes.

23 Q. Then he goes on and he attaches the  
24 referral letter, which lays it all out; right?

25 A. Yes.

1 Q. And he's quoting the very sentence that we  
2 just spent a little while on before the break; right?

3 A. Yes.

4 Q. And he tells her that that is the crux. Do  
5 you know what it means when someone says this is the  
6 crux of something?

7 A. Yes.

8 Q. What does that mean to you?

9 A. Like the most crucial point of it.

10 Q. Is what he told her correct, is he  
11 accurately telling ProPublica what the Office's  
12 position was here?

13 A. No.

14 Q. He was not? So this is false?

15 A. I can't speak for Alex or why he put that.  
16 But that was not the crux of it from my perspective,  
17 in reviewing and signing the referral to the AG's  
18 Office.

19 Q. But he quoted directly from the referral,  
20 did he not?

21 A. He did, yeah.

22 Q. He accurately quoted it, didn't he?

23 A. Yes. But again --

24 Q. I don't have a pending question. I know  
25 you'll probably want to explain that. But I don't

1 have a pending question on that right now.

2 So let's go back to the letter. Actually,  
3 before we leave it, I'm going to, just to save time,  
4 I want to ask you about something earlier. We had a  
5 long talk about what is this misinformation. You  
6 said you didn't know anything about it, but maybe  
7 other staff did. Do you recall that?

8 A. Yes.

9 Q. So let me take you earlier down in this  
10 Exhibit F. I'm going to go to the very first contact  
11 that your office got from Megan O'Matz at ProPublica.  
12 December 14, 2021. I'm on page 7 of Exhibit 8. And  
13 she says, "I'm a reporter at ProPublica looking into  
14 VoteRef." And she mentions the discrepancy. And  
15 then she has two questions. One, she says, "What  
16 could be the possible explanations for the  
17 discrepancy in New Mexico? And then, two, and did  
18 your office have any correspondence with this group  
19 about their findings or methodology? Can you please  
20 provide copies to me." Did I read that right?

21 A. That's correct, that's what it says.

22 Q. Now, do you recall internal discussions  
23 about how to deal with this outreach from ProPublica?

24 A. I don't recall specifics. I recall I was  
25 made aware of the request from ProPublica.

1 Q. Okay. I'm going to scroll here to his  
2 actual response, which comes on Thursday, December  
3 16, which is -- and now, we're getting very close to  
4 the referral, but still beforehand; right?

5 A. Um-hum.

6 Q. So he responds, "Hi Megan, simply put,  
7 VoteRef.com is misleading the public about New  
8 Mexico's voter rolls and are perpetuating  
9 misinformation." Did I read that right?

10 A. Yes.

11 Q. Having seen this, do you now recall  
12 internal discussion among staff about VoteRef  
13 engaging in misinformation?

14 A. Not specifically about VoteRef engaging in  
15 misinformation. I do recall a conversation about,  
16 again, sort of the misreading -- how voter data could  
17 be misread, because it is, essentially, like point in  
18 time. I mean, it's dynamic. It's changing. There  
19 could be lots of reasons why the voter rolls change  
20 on a day-to-day basis.

21 Q. Okay. And do you recall discussion in your  
22 office about how this was an effort to cast doubt on  
23 the 2020 elections, and that they're an affront to  
24 our democracy?

25 A. I don't recall that specifically, no.



1 Q. Okay. So you see that Mr. Curtas provides  
2 this as an official comment to ProPublica; right? Do  
3 you see that language?

4 A. "React to your specific questions," is that  
5 what you're referring to?

6 Q. No, it's in the main paragraph. So it  
7 says, "These attempts by political operatives to cast  
8 doubt on the 2020 elections are an affront to our  
9 democracy and the professionals who run our elections  
10 throughout the country." Did I read that right?

11 A. Yes.

12 Q. Now, was there discussion about this in the  
13 Secretary of State's Office before Mr. Curtas sent  
14 this email out?

15 A. Again, I don't recall this specific  
16 discussion. I'm sure there likely was. And this is  
17 not unlike other requests that we've dealt with since  
18 2020, and that's pretty much been our position.

19 Q. Okay. So this is the Secretary's position,  
20 and this is your position, too; is that right, Ms.  
21 Pino?

22 A. Yes. If there is attempts by political  
23 operatives to cast doubt on the 2020 election by  
24 either, again, manipulating data, or falsely claiming  
25 that there is discrepancies, when there is not, yes,

1 that is an affront.

2 Q. Right. And not just if there are, but the  
3 position was that these are just such -- these are  
4 those attempts; correct?

5 A. Again, I don't recall the specifics related  
6 to the VoteRef discussion or the ProPublica requests.

7 Q. Okay. Let's look now -- we'll drill down,  
8 and I'll skip the bullet point on discrepancy. In  
9 the second bullet point, this is answering your  
10 question about whether VoteRef had reached out, he  
11 says, "No, our office has not been contacted by this  
12 group to discuss their findings, likely because that  
13 would not serve their intended goal of spreading this  
14 misinformation." Did I read that right?

15 A. You read that right.

16 Q. Now, is that a true statement?

17 A. You'd have to ask Alex; he made the  
18 statement.

19 Q. Is it true that -- well, now, I'm going to  
20 ask you whether the office had, in fact, been  
21 contacted by VRF?

22 A. I'm not aware that we had, no.

23 Q. Okay. Would it surprise you to learn that  
24 they had, in fact, been contacted by VRF to get an  
25 answer for why there was a discrepancy?

1           A.     Again, I'm not aware that they had reached  
2     out, or any communications that Alex had had, either  
3     with VoteRef or any other entity related to this.

4           Q.     Do you recall any internal discussion  
5     asking Mr. Curtas not to disclose VRF's request for  
6     information?

7           A.     No.

8           Q.     Would you be concerned if Mr. Curtas had  
9     been wrong; that, in fact, VRF had reached out, he  
10    falsely accused them here?

11          A.     If Alex, again, made an inaccurate  
12    statement publicly, I would always be concerned about  
13    that.

14          Q.     Or privately to ProPublica; right?

15          A.     Even privately, publicly; if again, he made  
16    an inaccurate assessment, I would be concerned about  
17    that, and I would want us to correct that.

18          Q.     Okay. And then, we're about done with  
19    this.

20                         Where the normal paragraphs start again, he  
21    says, "Because accusations from political operatives  
22    like this are meant to impugn the integrity of our  
23    voter rolls, I'd also just want to note that our  
24    office is confident that the process and procedures  
25    already in place for voter list maintenance, not only

1 follow all state and federal guidelines," and he goes  
2 on.

3 I'm going to focus on the first part of  
4 that sentence. What information did the Secretary's  
5 Office have that VRF was acting as a political  
6 operative and meant to impugn the integrity of New  
7 Mexico voter rolls?

8 A. Again, as I have stated, I had no specific  
9 information related to VoteRef, or any of their  
10 actions at this time, other than, again, how they  
11 were illegally using voter data by putting it out on  
12 a public website.

13 Q. Why did the Secretary's Office take the  
14 position that VRF was a political operative trying to  
15 impugn the integrity of New Mexico's voter rolls?

16 A. You would have to ask Alex that question.  
17 Those were his words. And I did not review this,  
18 or -- I don't micromanage Alex -- or why he would  
19 have said that. You'd have to ask him.

20 Q. Okay. So does anybody else know? Would  
21 anybody else have approved this language?

22 A. Again, I supervise Alex, and I don't  
23 micromanage everything that he puts in an email or a  
24 response. We go over generally. And he knows what  
25 the position of the office is, broader position on

1 general issues, and so he frames that in his own  
2 words. And I don't go over and micromanage that.

3 Q. Can people who hear from Alex Curtas,  
4 whether it's newspapers or the public, can they be  
5 confident that that's really the official position of  
6 the Secretary of State's Office?

7 A. The general positions, yes. I am not aware  
8 that Alex has ever put out anything misrepresenting  
9 the general position or policies of our office.

10 Q. And it's your sworn testimony that you did  
11 not consult with Mr. Curtas before he published these  
12 statements?

13 A. I don't recall specifically. And again, I  
14 wouldn't have -- I know I didn't go over those email  
15 responses. But I'm sure we discussed generally the  
16 ProPublica request, and what our general position  
17 was. I just don't recall the specifics of those  
18 conversations.

19 Q. Okay. Well, are his statements at least  
20 consistent with your general position regarding VRF  
21 and its conduct?

22 A. About VRF and its conduct? Again, as I  
23 have already stated, I was not aware of specifics  
24 about VRF spreading misinformation at the time that  
25 this was done.

1 Q. Okay. And my question is not about whether  
2 you knew the specifics. My question is: Are his  
3 statements consistent with the Secretary of State's  
4 general position about VRF and VRF's conduct?

5 A. I couldn't answer that question, because  
6 again, I don't think our office has taken a position  
7 on VRF or its conduct, other than the fact of what we  
8 put in the referral, that we believe that them  
9 putting voter data on a publicly available website  
10 may be a violation of New Mexico State law.

11 Q. Now, you say "may be." The letter is not  
12 that -- the letter is more definite than that, isn't  
13 it?

14 A. Yes. I think it laid out our facts and  
15 positions. But this is not a legal brief, and we had  
16 not conducted any investigation. Just on the facts  
17 and information available to us at the time, we  
18 outlined the statute that either -- and I believe  
19 that there were several potential targets in that  
20 letter; that being Local Labs who signed off on an  
21 affidavit asserting that they intended to use the  
22 data in a certain way. So that could have  
23 potentially been a false swearing.

24 And then there was also the conduct of  
25 VoterRef, if they improperly used the data under New

1 Mexico law by making it publicly available on a  
2 website.

3 Q. Okay. And Local Labs' false swearing would  
4 be that it was -- the data was not used for one of  
5 the three purposes that you mention here; correct?

6 A. Under the -- what is it? -- 5.5, and,  
7 again, what you have to affirm and swear off in an  
8 affidavit of when you request the data, yes.

9 Q. Very good. Thank you.

10 Let's now go to the other -- there is  
11 another theory here. I don't want to leave that  
12 behind because you've referenced it a few times. If  
13 you look in the last paragraph before the conclusion,  
14 the very last point raised it kind of stands out with  
15 the word "additionally." It's in the very middle of  
16 the paragraph. Do you see it there?

17 A. Yes.

18 Q. Referring back to Exhibit C for the record  
19 here.

20 And so after running out the other theory,  
21 it says, "Additionally, Section 1-5-22A states, and  
22 the signed authorization form quotes that" -- then it  
23 has a long quote from the statute; right?

24 A. Yes.

25 Q. However, the signed authorization form

1 doesn't actually include that full quote, does it?

2 A. What signed authorization form are you  
3 referring to?

4 Q. The one in your referral letter. Do you  
5 see after the word "additionally"?

6 A. Yes.

7 Q. Do you follow me? That's the affidavit;  
8 right?

9 A. That's the affidavit? Or that's the  
10 language of the statute?

11 Q. Well, it says, "Section 1-5-22A states, and  
12 the signed authorization form quotes that" -- and  
13 then it has a long quote; right?

14 A. Yes.

15 Q. But the signed authorization form doesn't  
16 actually have that full quote, does it?

17 A. I'd have to look at it to reference that.

18 Q. We can do that.

19 A. Okay.

20 Q. Let's pull it up. I'm going to pull up  
21 Joint Exhibit A. This is the signed authorization  
22 form. Let's look at what Mr. Lippert signed. So  
23 here's what it actually says. Take a look.

24 A. Okay.

25 Q. Okay. The authorization form doesn't



1 actually have that quote, does it?

2 A. Not exactly, no.

3 Q. No. It's missing all the language about  
4 who that applies to; right?

5 A. What do you mean who it applies to?

6 Q. Let's look. The quote says, "Unlawful  
7 disposition of the voter file consists of the willful  
8 selling, loaning, providing access to, or otherwise  
9 surrendering of the voter file, duplicates of the  
10 file, or a part of the file by" -- okay, let's stop  
11 there. So if you go back to A -- let's go back for a  
12 second -- it stops. It says, "Duplicating or  
13 alteration of information," and then it says, "As  
14 stated in" -- and it just refers to the statute;  
15 right?

16 A. Yes.

17 Q. Okay. So the authorization doesn't tell  
18 you who that applies to; right?

19 A. I believe -- can I correct what my  
20 interpretation is?

21 Q. Sure. Sure.

22 A. So when I'm looking at 1-4-5.6, and  
23 specifically it says, "Any person, organization, or  
24 corporation or agent representing thereof commits  
25 unlawful use of voter data, mailing labels, or

1 special -- is guilty of a 4th degree felony" -- hold  
2 on one second. "Unlawful use of voter data consists  
3 of knowingly, willful use of such information for  
4 purposes prohibited by the Voter Records System Act."

5 So then, when we go to the Voter Records  
6 System Act -- let me get that. Hold on. It refers  
7 to "unlawful disposition."

8 So, specifically, when I read that, it's  
9 saying: If you do it for these purposes outlined in  
10 1-5-22, those are unlawful purposes?

11 Now, when we look at -- let's see, Section  
12 B of 1-4-5.6, that expands the world of people beyond  
13 what 1-5-22 says only data processors, data  
14 processors, agents, those types of people. This  
15 says, "Any person who engages in that unlawful  
16 use" -- that's again, some of which is outlined in  
17 1-5-22, which could be "Any person, organization,  
18 corporation or agent or officer or representative."  
19 So any of those people who use the data for an  
20 unlawful purpose, such as the purposes outlined in  
21 1-5-22, could be guilty of a crime.

22 Q. Sure. And I understand that that's your  
23 theory in this case. That actually wasn't my  
24 question to you, but I think we've saved time because  
25 I bet that was going to come out on your other

1 direct.

2 But you would agree with me that what's  
3 actually in chapter 50 -- or should we call it  
4 Article 5 -- Article 5 makes no reference to other  
5 people being covered, does it?

6 A. Article 5 does make reference to other  
7 people being covered. Oh, I'm sorry --

8 Q. Does not?

9 A. I'm looking at the wrong one. Yes, you're  
10 right.

11 Q. What you're saying is that 1-4-5.6B expands  
12 what's in Article 5 to cover other people?

13 A. Yes. Otherwise, you wouldn't have the need  
14 for the statute. You would just have it in 1-5-22.

15 Q. By the way, did you understand that 1-4-5.6  
16 and 1-4-5.5 have both been in Article 5, and were  
17 moved over to Article 4?

18 A. What?

19 Q. Did you know that that had happened?

20 A. No. Oh, that had moved over to 1-4?

21 Q. Yes.

22 A. No.

23 Q. In fact, there is no actual purposes  
24 referenced at all in 1-5-22, are there? You can take  
25 a look there. There is no reference to purposes in

1       there, are there?

2           A.     Not in this specific one, no.

3           Q.     Let's move on. I don't want to take more  
4       of our time on this. I do want to ask you a couple  
5       of questions.

6                   I understand your position is that any  
7       sharing of the data by somebody who has requested it,  
8       any sharing of the data, outside of an entity or from  
9       one person to another, violates this combination of  
10      statutes; correct?

11          A.     Again, not if it's done for governmental  
12      purpose or a campaign purpose that are outlined in  
13      the statute or specific to requesters. When you  
14      request it, that's what you're saying: You  
15      understand it needs be used for this purpose.

16          Q.     I see.

17          A.     VoteRef was never a requester.

18          Q.     I see. So a requester actually can share  
19      it with somebody else, but it needs to be for  
20      governmental or campaign purposes?

21          A.     Those are the appropriate uses for those  
22      purposes, yes.

23          Q.     Okay. So the problem, in your view,  
24      becomes when the person that they share it with for  
25      governmental or campaign purposes, in turn, shares it

1 with someone else?

2 A. If whoever the data is shared with uses it  
3 for an unlawful purpose, such as the purposes that  
4 are outlined in 1-5-22, then, yes, that's  
5 problematic.

6 Q. Okay. Well, of course, there are no  
7 purposes outlined in 1-5-22, we just agreed on that;  
8 correct? There is no reference to purposes in there?

9 A. Or uses. Sorry. If they use it in that  
10 the manner, then yes, that's what prompted the  
11 referral, and specifically related to the conduct of  
12 VoteRef of placing the data on a public website.

13 Q. So, in your view, what Local Labs did was  
14 okay, so long as it was for governmental or campaign  
15 purposes; right?

16 A. If they utilized the data and had no  
17 willful intention to share it for an illegal purpose,  
18 then -- it's not that you can never share the data.  
19 It's that you're affirming on this affidavit, this is  
20 how you're going to utilize the data. And they  
21 didn't utilize it in that way.

22 Q. Okay. Now, what if the person who receives  
23 the data utilizes it for the same purpose? Is that  
24 okay?

25 A. I don't know. I guess I'd have to think

1 about that. But that wasn't the purpose of this  
2 referral.

3 Q. Right, but --

4 A. If they do it for a government purpose or  
5 the election campaign purposes, as defined in 5.5,  
6 like if you're doing it within your entity. For  
7 instance, we provide the data to campaigns, or to  
8 parties. And they are sharing it with candidates who  
9 are using it, again, for lawful purposes, then there  
10 is nothing wrong with that.

11 Q. Okay. And that's a position of your office  
12 as best as you understand it; correct?

13 A. Yes.

14 Q. But the problem here with VoteRef was that  
15 it was not using it, in your view, for governmental  
16 purposes or campaign purposes; right?

17 A. It was actually using it for an unlawful  
18 purpose, which is detailed -- or I keep saying  
19 "purpose" -- it was using it unlawfully under  
20 1-4-5.6.

21 Q. Right. But you just said in your  
22 hypothetical that if someone shares it with another  
23 entity, and that entity then uses it for a  
24 permissible purpose, there is no violation.

25 So wouldn't VRF have had to have used it

1 for an unlawful purpose to have committed a  
2 violation?

3 A. They used it --

4 MS. SERAFIMOVA: Objection, Your Honor. If  
5 I may. It misstates her testimony.

6 THE COURT: Well --

7 THE WITNESS: And I'm sorry, I misquoted  
8 the wrong statute, when I just stated to you.  
9 It's --

10 THE COURT: Hold on. Let me rule on the  
11 objection.

12 THE WITNESS: Sorry, Your Honor.

13 THE COURT: Overruled. And if you need to  
14 go into it on your cross, you can do so.

15 All right. Go ahead, Mr. Greim.

16 BY MR. GREIM:

17 Q. I do want to let the witness stay -- she  
18 said she referenced the wrong statute. I want you to  
19 finish, just so I understand, if you don't mind, Ms.  
20 Pino.

21 A. Sure. The basis of the referral for  
22 VoteRef is the manner in which they used the data was  
23 unlawful. And the statute I miscited -- I said  
24 1-4-5.6, but what I really meant is the 1-5-22, the  
25 unlawful disposition of voter file.

1           Now, 1-4-5.6 certainly links that conduct,  
2       because that expands the world to include VoteRef;  
3       that you can't unlawfully dispose of a voter file.  
4       They unlawfully disposed of a voter file, in my  
5       view -- and again, that was the basis of the  
6       referral -- when they posted it on a public website.

7           Q.    What if the people that are using it on the  
8       public website are themselves using it for  
9       governmental or campaign purpose?  Doesn't that solve  
10      the problem?

11          A.    No, because they, again, did not have the  
12      ability to unlawfully dispose of the voter file,  
13      which means willfully providing access to or  
14      otherwise surrendering the voter file.  And that can  
15      be any part of the voter file.  And that's exactly  
16      what they did.

17          Q.    Okay.  I'm just going to skip ahead, Ms.  
18      Pino.  Let's see, I'm going to ask you:  Did you work  
19      with the -- you're the person who worked directly  
20      with the AG's Office at the outset; correct?

21          A.    That's correct.

22          Q.    And you're also the person who worked or  
23      one of the people who worked with the California  
24      Attorney General's Office as well; is that right?

25          A.    I connected the California Attorney



1 General's Office to our contact, or the person we  
2 have been working with at the AG's Office. I was  
3 asked to make a connection, and I did that.

4 Q. What was the purpose of connecting with the  
5 California Attorney General's Office in a New Mexico  
6 matter?

7 A. I have no idea. They reached out to our  
8 Secretary, and asked who we had been working with. I  
9 guess somehow they became aware that we had some sort  
10 of action against VoteRef. So they reached out to  
11 the Secretary. The Secretary sent it to me, and  
12 asked to make the connection. I reached out to Ann  
13 Kelly, and asked her if it was okay if I provided her  
14 contact information. She indicated it was. And so I  
15 sent them her contact information. And that was all.

16 Q. Why has the New Mexico Attorney General's  
17 Office been working with the California Attorney  
18 General's Office?

19 A. I have absolutely no idea. I was asked to  
20 make a connection, and I did so.

21 Q. Okay. Are you also aware that the  
22 California AG's Office made a referral to the FBI?

23 A. I am not aware of that, no.

24 Q. Okay. So I'm going to show you what we've  
25 marked as Exhibit 11. This is a January 26th email

1 from an Anna Trujillo, to someone named Monroney at  
2 the FBI. Have you seen this document before?

3 A. I saw it in the exhibits in preparing for  
4 this hearing.

5 Q. And you don't know anything about it?

6 MS. SERAFIMOVA: Mr. Greim, just for the  
7 record, you said the California Attorney General's  
8 Office is referring to the FBI. And I think you  
9 meant New Mexico Attorney General's Office.

10 MR. GREIM: I did. Thank you for that  
11 correction.

12 Q. Did you understand my question, Ms. Pino?

13 A. Yes. And I am not aware. I did not have  
14 any involvement beyond making the connection between  
15 Ann Kelly and the contact in California, when I was  
16 asked to do that.

17 MR. GREIM: Okay. I have no further  
18 questions for you. This is when I would normally, I  
19 guess, rest. I do want to move some exhibits in that  
20 are not moved in yet. I can do that now or I can  
21 wait, just to avoid interrupting Ms. Pino, and let  
22 her finish up.

23 THE COURT: Go ahead and make your motion.

24 MR. GREIM: Okay. So I would move to admit  
25 what I haven't admitted before that are Plaintiffs'

1 Exhibits. They are Plaintiffs' Exhibits 6 through 9  
2 and Plaintiffs' Exhibits 10 through 14.

3 THE COURT: Any objections to those,  
4 Ms. Serafimova?

5 MS. SERAFIMOVA: Your Honor, 10 through  
6 16 -- we've only touched 10 and 11. Mr. Greim has  
7 not even pulled up the rest of them. No witness has,  
8 you know, testified, there is no foundation that  
9 they're even relevant.

10 So no objections to the exhibits that have  
11 actually been discussed with the witness, but 12  
12 through 16, there is just nothing on record of those.

13 THE COURT: Well, I don't think that's a  
14 basis to exclude them. So I'll admit Plaintiffs'  
15 Exhibit 6 through 9, and 10 through 14.

16 All right. Do you have cross-examination,  
17 Ms. Serafimova, of Ms. Pino?

18 MS. SERAFIMOVA: Yes, Your Honor. Thank  
19 you.

20 CROSS-EXAMINATION

21 BY MS. SERAFIMOVA:

22 Q. Okay. Ms. Pino, thank you for your time  
23 today. So you testified you are the Deputy Secretary  
24 of State; correct?

25 A. That's correct.

1 Q. And what was your prior position with the  
2 Office?

3 A. I was the general counsel.

4 Q. And when were you employed, first employed  
5 by the Office?

6 A. January of 2019.

7 Q. And how many years of practice do you have  
8 under your belt?

9 A. Almost 23.

10 Q. And how many of those are in criminal law?

11 A. About 19 of those.

12 Q. And I just want, if I may --

13 MS. SERAFIMOVA: Mr. Greim, could you stop  
14 sharing?

15 MR. GREIM: I'm sorry.

16 MS. SERAFIMOVA: No worries.

17 Q. Okay. So just for absolute clarity, I will  
18 pull up State's Exhibit 5. Give me one second. Here  
19 we go. Okay.

20 And we've discussed this, and you discussed  
21 it with Mr. Greim. But State's Exhibit 5 has 1-4-5.6  
22 on the first page. And then the second page is  
23 1-5-22?

24 A. Yes.

25 Q. Okay. So you testified that you

1 interpreted this reference here to the Voter Records  
2 System Act, which is Article 5; is that right?

3 A. Um-hum.

4 Q. And essentially incorporating relevant  
5 parts of this section here, 22A?

6 A. The first part up to -- the first sentence  
7 up to the word "file," I believe explains the  
8 conduct, which would constitute unlawful disposition.

9 Q. Okay. And as you correctly stated, 1-5-22  
10 is itself a 4th degree felony, right? Under C it  
11 carries its own criminal penalty?

12 A. Yes, it carries its own criminal penalty,  
13 but under that particular statute, that's only  
14 applicable to certain people. When it incorporates  
15 the language into the -- what is it again? Sorry.  
16 The 1-4-5.6, in B, that expands the world of people  
17 that that conduct applies to.

18 Q. Okay. And so this is where 5.6B comes into  
19 play, right, it's any person, any organization?

20 A. Yes.

21 Q. And under B, this is a 4th degree felony;  
22 right?

23 A. That's correct.

24 Q. So it's your interpretation that it would  
25 be redundant to interpret this section as merely

1 repeating, essentially, 22A?

2 A. Yes, because you already have the other  
3 one, yes.

4 Q. So if we can go back to the referral, and  
5 I'll pull it up on my end. And you testified, you  
6 know, that Alex Curtas, when you wrote in an email  
7 this is -- actually, let me pull up. Forgive me for  
8 needing just a moment. Okay, Plaintiffs' 8. I can  
9 work with this document. This is actually C1, which  
10 has all the attachments, but we don't necessarily  
11 need to look at those.

12 But are you able to see this document, C1?

13 A. I don't see anything on that. Which one  
14 are you referring to, again?

15 Q. After two years of practice, I'm still  
16 struggling to use Zoom.

17 A. You said C1?

18 (A discussion was held off the record.)

19 Q. Okay, here it is. So you were asked to  
20 look at the email between Alex and ProPublica. And  
21 do you remember the sentence: "This is the crux"?

22 A. Yes.

23 Q. And at that point he quotes this sentence  
24 right here, "We don't believe providing this personal  
25 voter data on a private website that intends to

1 spread misinformation," and so on; right?

2 A. Yes.

3 Q. This is the quote?

4 A. Um-hum.

5 Q. Did you select that quote for him?

6 A. No.

7 Q. You don't know why he chose that particular  
8 sentence, or do you?

9 A. No, I don't. I mean, to me, again, I  
10 wasn't preparing this like this was some type of  
11 legal brief or anything else. My focus was on what  
12 we were alleging, mostly in the next paragraph and in  
13 the conclusion.

14 Q. Okay. Let me ask you: What are you  
15 alleging with respect to Local Labs in this referral?

16 A. Again, Local Labs, they certainly put in a  
17 request for voter data and a request for voter data  
18 under 5.5. And they signed off on an affidavit  
19 asserting, you know, all of the uses, and it was for  
20 one of the lawful purposes.

21 Now, if they knew at the time that they  
22 signed that affidavit that that could essentially be  
23 a false affidavit, which carries, itself, separate  
24 criminal penalties.

25 Q. Okay. So am I understanding correctly that

1 with respect to Local Labs, you suspected there may  
2 have been a violation of 5.5, does that sound right?

3 A. Potentially, yes. I mean, again, we hadn't  
4 conducted any investigation. Just based off of facts  
5 that we had at that time, we were trying to lay it  
6 all out. That's really up to the Attorney General's  
7 Office to do their own investigation and determine  
8 if, in fact, they violated that.

9 Q. Okay. And then you knew, at this point, it  
10 sounds like, that Local Labs potentially handed over  
11 the data to VRF, is that --

12 A. It seems like, yeah, we were able to trace  
13 the specific data that was being put out on this  
14 website to the request that was made by Local Labs.

15 Q. And with that action of Local Labs handing  
16 over the file to VRF, did you suspect that that was a  
17 violation of the Election Code?

18 A. Of them handing it over to -- it  
19 potentially -- again, we had no information at the  
20 time that Local Labs knew that it was going to be  
21 used for an unlawful -- used in an unlawful manner,  
22 which, again, if the Attorney General's Office did  
23 uncover that, that could be some potential liability  
24 from Local Labs for a violation of 5.6. But we  
25 didn't have any of the information at that time.



1 Q. Okay. And would you -- given your  
2 understanding of the law, would you agree that, if  
3 Local Labs sold the data to VRF, they would have  
4 potentially violated 5.6?

5 A. Um, potentially. Again, if you are -- let  
6 me just look at that again, just to refresh my  
7 memory. Because it could be, if again, they did so  
8 willfully, because it could be again, 1-4-5.6, which  
9 then implicates 1-5-22 that talks about willfully  
10 selling.

11 Q. And then in this referral, with respect to  
12 VRF, was the concern that they had uploaded the data  
13 on a website in violation of 5.6?

14 A. In violation of 5.6, yes, because that  
15 involved the willful providing access to the voter  
16 file.

17 Q. Okay. Then, if we look in the conclusion  
18 section, the second sentence says, "We believe that  
19 both VoteRef.com and Local Labs have violated the  
20 prohibition against providing voter data by posting  
21 New Mexicans' private voting information online, or  
22 in Local Labs' case, providing the voter data to  
23 VoteRef.com."

24 Is that an accurate summary of what your  
25 intent, and understanding of the facts and the law

1 was at that time?

2 A. Yes.

3 Q. Would you say that this is, in fact, the  
4 crux of the referral?

5 A. Yes.

6 Q. Okay. And then you were asked -- going  
7 back to the first full paragraph on this page -- last  
8 sentence -- you were asked a number of questions  
9 about: "We do not believe providing this personal  
10 voter data on a private website that intends to  
11 spread misinformation about the 2020 general election  
12 meets the definition of appropriate use."

13 Does it matter what the intent of the  
14 website is for purposes of 5.6?

15 A. Absolutely not. And that wasn't my focus  
16 in making the referral. My focus was, again, the  
17 fact that they took this voter file and made it  
18 available on a public website, which, again, is  
19 clearly against New Mexico law. It's how they were  
20 using the data.

21 Q. And given your understanding -- if, let's  
22 say, the Democratic Party were to obtain voter data  
23 from your office and upload it to their website,  
24 would that be a violation of 5.6?

25 A. Yes.

1 Q. And so this clause on the website that  
2 intends to spread misinformation about the election,  
3 could you leave that out without changing anything  
4 about, you know, substantively changing the referral?

5 A. Yes. That makes no difference in any of  
6 this. I mean, even if that were not a fact in this  
7 case, the referral still would have been made,  
8 because regardless of who they are, you can't take --  
9 our laws are highly restricted about who gets voter  
10 data and how you use voter data. And that's for a  
11 reason. So it doesn't matter who does it. If you  
12 get it -- I mean, use it for an unlawful purpose and  
13 we're aware of that, we're going to refer it to the  
14 AG's Office.

15 Q. Okay. Now, you were asked whether the  
16 substance of this letter is not frivolous, and you  
17 said it is not; correct?

18 A. What was that again, I'm sorry, I had a  
19 hard time hearing you.

20 Q. I'm sorry. You were asked whether you  
21 believe this referral was nonfrivolous. And you do?

22 A. Yeah, it's not frivolous.

23 Q. Okay. Would you describe this as having  
24 probable cause?

25 A. Yes.

1 Q. And you were asked if it is absolutely  
2 correct. Were you -- (Zoom audio garbled).

3 THE COURT: We didn't understand the word.  
4 Do you want to repeat that?

5 MS. SERAFIMOVA: I'm sorry. I'm wondering  
6 if I'm having connection issues again.

7 Q. You were asked if this letter is absolutely  
8 correct, and you testified that yes?

9 A. Yes, the substance of the letter. And,  
10 again, the facts that we laid out, and the statutes  
11 that we believed are violated is correct.

12 Q. And like you said, this is not a legal  
13 opinion in any form or way; right?

14 A. No. I mean, as I've stated, we don't have  
15 investigators in the office. We didn't conduct an  
16 investigation. We identified what could potentially  
17 be a violation of law from our perspective, put all  
18 the facts and information, and pointed out the  
19 potential laws that we felt were violated to a  
20 referral to the Attorney General's Office to make  
21 that determination.

22 Q. And this document is a functional document,  
23 is it not?

24 MR. GREIM: Objection; leading, vague.

25 MS. SERAFIMOVA: Okay.

1 THE COURT: Try not to lead.

2 Q. Is this a functional document?

3 A. It is.

4 Q. And does it serve the function that you  
5 intended it to serve?

6 A. Yes, to bring the matter to the Attorney  
7 General's attention so it could be properly  
8 investigated, and if any crimes were committed, they  
9 could be pursued.

10 Q. Okay. Now, you were also asked -- if you'd  
11 give me just a second. Okay. You were asked about  
12 again, Plaintiffs' 8, Alex's email to ProPublica. Do  
13 you remember that?

14 A. Yes.

15 Q. Okay. And you were asked if he -- you  
16 know, would you be concerned if he made a false  
17 statement in asserting that VRF had not contacted  
18 your office?

19 A. Yes, I would be concerned about that.

20 Q. Okay. So if I could show you -- if you  
21 could give me a moment. Okay.

22 So is Plaintiffs' Exhibit 2, which is an  
23 email dated December 14, 2021, from VRF to the  
24 SOS.election website, that talks about the  
25 discrepancy -- what we've been referring to as the

1 discrepancy in this case. Do you know what I'm  
2 talking about?

3 A. Yes, from reviewing that, yes.

4 Q. And just for the record, Plaintiffs' 8,  
5 that email was dated December 16. Does that sound  
6 correct? I can pull it up.

7 A. It says December 14; is that right?

8 Q. I'm sorry, this document is December 14.

9 A. Oh, okay.

10 Q. But on December 16, Plaintiffs' 8 is where  
11 Alex says we have not been contacted.

12 Okay. Outside of this lawsuit, had you  
13 seen this email before, Plaintiffs' 2?

14 A. No. I don't recall seeing that before.

15 Q. You don't recall. And it is not -- what is  
16 this SOS.elections website?

17 A. That's our general elections email where  
18 things come into the office and then they're  
19 distributed throughout elections depending on what  
20 the request is.

21 Q. Is this Mr. Curtas' email address?

22 A. No.

23 Q. And is his contact information listed on  
24 your website?

25 A. I believe it is, yes.

1 Q. And, presumably, that's how media outlets  
2 reach out to him?

3 A. Yes.

4 Q. So this was not sent -- this email,  
5 Plaintiffs' 2 -- two days before he makes the  
6 statement, they have not reached out, was not sent to  
7 his email address; right?

8 A. That's correct.

9 Q. So he could have been mistaken that no  
10 email was ever sent to your office when he responded  
11 to ProPublica; correct?

12 A. Yeah. I mean, based off of the things that  
13 come into that email, I can almost 100% guarantee  
14 that he wasn't aware that that had come in.

15 Q. Okay. And making a mistake or being  
16 inaccurate is not the same as falsely accusing VRF of  
17 not reaching out; right?

18 A. Correct.

19 Q. And would you agree that only Mr. Curtas  
20 can actually tell us what he knew and he didn't know  
21 as of December 16th?

22 A. Yeah, I can't speak for Mr. Curtas.

23 Q. Okay, great.

24 And then, I think -- let's see, just to  
25 clarify this -- one final -- you did say that --

1 well, let me just -- let's say if the Democratic  
2 Party signs an affidavit and obtains voter data from  
3 your office --

4 A. Um-hum.

5 Q. -- and it then turns around and uploads it  
6 on its own website under 5.6 --

7 A. No. I mean, it can share it with its  
8 candidates. I mean, for campaign purposes, utilizing  
9 the data; you know, that could be a potential  
10 violation of 5-6, if they just put it up on the  
11 website. You're making the voter file available.

12 Q. So am I understanding your position  
13 correctly that internal sharing has to be lawful and  
14 the external sharing is prohibited under 5.6?

15 A. Yes. Because that implicates, again, the  
16 unlawful disposition actions which are outlined in  
17 1-5-22.

18 Q. Okay. So if two members of the Democratic  
19 Party -- let's say an affidavit is submitted on  
20 behalf of the party, so it's an organization -- and  
21 they share the data between themselves for an  
22 unlawful purpose, such as harassing somebody's  
23 ex-spouse, for example, that would be a violation of  
24 5.5; correct?

25 A. If they are -- could you repeat that again?



1 I'm trying to connect what you're saying.

2 Q. So let's say you and I work for the  
3 Democratic Party. We have obtained information from  
4 the Secretary of State's Office by filing an  
5 affidavit listing the party as the requester. And  
6 then I say to you: I really want to find out where  
7 my ex-boyfriend lives so that I can go harass him,  
8 and you give me that information?

9 A. That's not a government use or a campaign  
10 use of the data.

11 Q. So that would be prohibited under 5.5;  
12 correct?

13 A. Yes. If you're requesting it for that  
14 purpose. And again, you're -- it's more relating to  
15 the affidavit that you're signing, and you're saying  
16 that you're going to do it for a government or  
17 campaign purpose, when you know it's not a legal  
18 purpose, it's for a purpose outside of that.

19 Q. Okay.

20 A. So you don't see that signed affidavit.

21 Q. Okay. Thank you.

22 All right. So we know you made a December  
23 2021 referral regarding VoteRef and Local Labs, and  
24 then you made another referral dated March 23, 2022  
25 about New Mexico -- I'm sorry, Karen Clemens. Do you

1 recall? Forgive me. I'll just pull it up.

2 A. Um-hum.

3 Q. So have y'all made any other referrals in  
4 your -- during your time at the Secretary of State's  
5 office relating to voter data?

6 A. No, these are the only two that have come  
7 to our attention.

8 Q. Okay. And did you contact either one of  
9 these so-called targets of these referrals prior to  
10 making the referrals?

11 A. No.

12 Q. Do you think you treated these referrals in  
13 any way different from each other?

14 A. No.

15 Q. You didn't, for example, reach out to Karen  
16 Clemens and give her an opportunity to cure, as it  
17 were, before you referred her to our office, to the  
18 Attorney General's Office?

19 A. No, that wouldn't be -- again, if potential  
20 criminal conduct had come to our attention, you know,  
21 we're not going to do anything that may hinder an  
22 investigation. We're going to take the facts as we  
23 have it and turn it over to law enforcement. And we  
24 typically work with the Attorney General's Office.

25 Q. And given your criminal law background,

1 would you agree that actually reaching out in that  
2 manner could have some confrontation clause  
3 implications?

4 A. Could have confront --

5 MR. GREIM: Objection, leading.

6 THE COURT: Overruled.

7 Q. Would you agree -- given your criminal law,  
8 extensive criminal law background, would you agree  
9 that reaching out to potential targets could have  
10 confrontation clause implications?

11 A. Possibly.

12 Q. Okay. So you may have seen it, but in  
13 their reply, plaintiffs -- you know -- and I'm going  
14 to quote -- like in reference to your interpretation  
15 or your office's interpretation of Section 1-4-5.6,  
16 in their reply to the motion in support of the motion  
17 for preliminary injunction, plaintiff states, and I  
18 quote, sorry, that interpretation now stretches it  
19 beyond a breaking point to criminalize even the  
20 reselling of data to companies -- I'm sorry, to  
21 campaigns by well known firms like Catalist and I360.  
22 Do you know who either Catalist, LLC, or I360, LLC  
23 is?

24 A. No. I was told about those entities in  
25 preparing for this hearing. But I wasn't aware of

1 who they are before then.

2 Q. And that was going to be my next question.  
3 When did you first become aware of them? In the  
4 context of this case?

5 A. Yes.

6 Q. More specifically, the prior hearing and  
7 today; is that right?

8 A. Um-hum.

9 Q. Do you have any knowledge as to what either  
10 company's products is?

11 A. I do not.

12 Q. So if you received information that an  
13 entity named Catalist, LLC, is uploading New Mexico  
14 voter data on its website, would that potentially  
15 cause you to refer them to the Attorney General's  
16 Office?

17 A. Absolutely.

18 Q. And the same with I360. If you believe you  
19 had probable cause to refer them to the Attorney  
20 General's Office, would you refer them?

21 A. Yes.

22 Q. And then final topic, from me anyway, is  
23 you've shared with me that, as a public servant, a  
24 pretty high level public servant, you have taken  
25 certain steps to keep your personal information

1 private; correct?

2 A. Um-hum.

3 Q. And with respect to the internet in  
4 particular; is that right?

5 A. Yes, utilizing a scrubbing service.

6 Q. Yeah, could you tell us what you have done?

7 A. Again, those services remove any of your  
8 personal data, such as phone numbers, addresses, they  
9 get those removed from websites, so that those aren't  
10 shared. And I also use a Post Office Box so that my  
11 personal address is not on the internet.

12 Q. Are you a registered voter in New Mexico?

13 A. Yes.

14 Q. And, by law, are you able to provide your  
15 P.O. Box on your registration?

16 A. No, I have to use my personal address. But  
17 I can use my P.O. Box to receive all of my election  
18 material.

19 Q. Okay. So would you agree that if the  
20 motion for preliminary injunction is granted, and the  
21 data that VRF has in its possession is uploaded, your  
22 residential address will now be on the internet?

23 A. Yes.

24 Q. And would you describe that as irreparable  
25 harm to you?

1           A.     Yes.   Especially now with all the threats  
2     against election officials, many of which have  
3     swarmed into our office this week.

4           Q.     And so, is there any way for you -- have  
5     you looked at the VoteRef website? Have you had a  
6     chance?

7           A.     I think I did a while back before it was  
8     pulled down. I haven't recently.

9           Q.     Okay. Let me show you State's Exhibit 8.  
10    Give me a second.

11                   And I'll represent to you that this is a  
12    printout of VoteRef that I created this morning, June  
13    15th, at 8:59. And I also went to the Colorado  
14    database, and just the first person that came up on  
15    the website I opened. And it just so happens that  
16    this person -- and I'm not going to try to pronounce  
17    their name -- here is their address. They happen to  
18    not have any voter history. But if we can take a  
19    look at this paragraph right here. And let me know  
20    when you've had a chance to read it.

21           A.     The one having to do with upon receipt or  
22    the whole paragraph?

23           Q.     Well, the whole paragraph, if you wouldn't  
24    mind, starting from "the information on this website"  
25    all the way down.

1 A. Okay.

2 Q. So does it provide someone like you an  
3 opportunity to request to be taken off of their  
4 database or the website?

5 A. It looks like, again, I would have to  
6 contact the Secretary of State. I would essentially  
7 have to not register to vote; I would have to cancel  
8 my registration to vote. Is that correct?

9 Q. Well, the only option is they mention the  
10 address confidentiality program.

11 A. We don't have that here in New Mexico for  
12 public officials or anyone else.

13 Q. So there is no option for just any -- you  
14 know, the only option that they mention is, if you  
15 are under the Address Confidentiality Program, which  
16 appears to be some sort of federal -- well, maybe not  
17 federal, but there is a citation here -- there is  
18 some sort of -- I take that back -- program; then,  
19 and only then, you can ask to be taken off?

20 A. Yes.

21 Q. And so, now, I voted -- I was a registered  
22 voter -- I am a registered voter and I was a  
23 registered voter also in 2021. Does that mean that  
24 my home address is also on the file that VoteRef, or  
25 VRF has, and wants to upload?

1           A.     If you're a registered voter, and that  
2     would be part of the voter file, yes.

3           Q.     So for me, if I don't want my actual  
4     residential address to be on this website, I would  
5     actually have to move; would I not?

6           MR. GREIM:   Objection; calls for  
7     speculation.

8           THE COURT:   Well, let's see if she can  
9     answer it.   I'll make a determination of the basis  
10    for it.   Overruled.

11          A.     You would have to move.   But if you moved,  
12    and you still wanted to vote, you'd have to change  
13    your address.   And so, then, it eventually would be  
14    on there again.

15          Q.     And, thank you, that's my next question.

16                 So let's say I'm someone who was not a  
17    registered voter at the time the data was pulled,  
18    that VRF has in its possession, but now -- let me  
19    phrase this -- I don't want my residential address to  
20    be on any future requests by VRF, and therefore, I  
21    don't want it to be on their website for any updates,  
22    for example, that they make.   If I register to vote,  
23    I cannot accomplish that; right?

24          A.     No.   I mean it's going to be part of your  
25    voter file.



1 Q. And do you feel that disclosing voters'  
2 residential address, in addition to the party  
3 affiliation on a public website would negatively  
4 affect the system, our voting system?

5 MR. GREIM: Your Honor, this calls for  
6 personal opinion and speculation.

7 THE COURT: Well, it may be limited to  
8 that, and it may not have much value, but I'll allow  
9 the question. Overruled.

10 A. Yes. I think it could be very harmful. I  
11 think it could cause people to not want to  
12 participate in the process, if, again, they know  
13 their information, private information, is out there,  
14 and, you know, losing confidence in, again, how their  
15 data is kept.

16 I think, case in point is our second  
17 referral to the Attorney General's Office. Voter  
18 files were shared, and then so-called volunteers went  
19 door to door interrogating voters about their  
20 participation in the process. That has a chilling  
21 effect, where people don't want to participate and  
22 don't want to vote.

23 Q. And is that your personal opinion, your  
24 professional opinion, as the Deputy Secretary of  
25 State for New Mexico, or both?

1 MR. GREIM: She got it out before I could  
2 object. But I don't think she's an expert witness  
3 here.

4 THE COURT: Yeah, I think she's a fact  
5 witness here. And so we probably need to limit her  
6 to just giving facts and not shifting her over into  
7 an expert.

8 BY MS. SERAFIMOVA:

9 Q. Okay. Is your opinion informed by your  
10 experience as the Deputy Secretary of State for New  
11 Mexico?

12 A. Yes.

13 Q. So, final questions, just give me one  
14 second -- I'm sorry, one more document, if I may. So  
15 I will pull up the version of the form that you  
16 discussed with Mr. Greim.

17 MS. SERAFIMOVA: Mr. Greim, please correct  
18 me if I'm not pronouncing your name right.

19 MR. GREIM: You've been good from the  
20 start.

21 MS. SERAFIMOVA: I've been good, okay,  
22 great.

23 Q. Okay. So he asked you about -- again this  
24 sentence: "Unlawful use of information requested on  
25 this form shall consist of willful selling, loaning,

1 providing access to, or otherwise surrendering,  
2 distributing or operation of information, as stated  
3 in the Voter Records System Act." This is not a  
4 direct quote from any one statute, is it?

5 A. I don't believe that it is, no.

6 Q. Would you agree that this is actually a  
7 combination of information from 5.6 and 22A?

8 A. Yes, and I think that's why it includes  
9 Section 1 through 31.

10 Q. Wonderful. If you give me just one second  
11 in case I don't have a chance to ask you another  
12 question.

13 Okay. Thank you, I don't have any more  
14 questions.

15 THE COURT: All right. Thank you,  
16 Ms. Serafimova.

17 How about you, Mr. Greim, do you have  
18 redirect of Ms. Pino?

19 MR. GREIM: Your Honor, I actually do have  
20 a short redirect.

21 THE COURT: All right.

22 MR. GREIM: Limited to two topics. May I  
23 proceed, Your Honor?

24 THE COURT: You may.  
25

1 REDIRECT EXAMINATION

2 BY MR. GREIM:

3 Q. Ms. Pino, I just want to understand the  
4 Secretary's position on the sharing of data, and when  
5 it's allowed and when it's not allowed, because,  
6 candidly, I think heard a different answer on direct  
7 versus on cross.

8 A. Okay.

9 Q. So I think the best way to approach it is  
10 just through a hypothetical. I understood you to  
11 answer my questions about this topic to say that it  
12 is not automatically a crime for one entity to share  
13 data with another entity so long as the purpose of  
14 that sharing falls within one of those -- however  
15 count -- either two or three criteria. Am I right  
16 about that?

17 A. I think that examples that I was giving was  
18 sort of individuals within the entity, like again,  
19 the Democratic Party sharing it with candidates who  
20 are -- but again, if you're doing so for one of the  
21 stated purposes --

22 THE COURT: Hold on just a second. We've  
23 got somebody has called in and they've not muted  
24 their phone. All right. Is it muted now?

25 Okay. Go ahead, Ms. Pino.

1           A.     Again, it would have to fall within the  
2     provisions of 5.5. So I don't think 5.5, when you  
3     say that you're going to request the data -- I think  
4     it can be shared, but again within your entity and  
5     for some of this stated purposes like campaign  
6     purposes -- election campaign purposes or  
7     governmental purposes.

8           Q.     Okay. Now, a political party and a  
9     candidate's campaign are not the same entity, are  
10    they?

11          A.     A political party and candidates within  
12    that party are -- they're, in essence, part of the  
13    Democratic Party, so yes, it can be shared with  
14    candidates.

15          Q.     Okay. So that's the position of the  
16    Secretary of State's Office?

17          A.     Yes.

18          Q.     Okay. But what about a political party and  
19    a candidate in an Independent Party they may be  
20    supporting for various reasons? If the candidate is  
21    in a different party, now we have a crime?

22          A.     Again, if the candidate is within a  
23    different party, they can request the data themselves  
24    under 5.5, because they are one of the entities that  
25    would be entitled to request the data.

1 Q. Okay. So your answer to this now is that  
2 any sharing has to happen within the entity; so the  
3 entity has to be sharing it with itself?

4 A. Within the entity and for the stated  
5 purposes. I think the example was also given, if  
6 it's going to be for some kind of unlawful purpose,  
7 such as harassing, that then, essentially -- and  
8 you've requested the data -- then you've sworn off on  
9 that affidavit and you haven't been truthful.

10 Q. You testified that this -- I'm not sure  
11 what your testimony was ultimately on this Safe at  
12 Home Program. But I think at least you said it's not  
13 available in New Mexico; correct?

14 A. We do have Safe at Home. Not for  
15 political -- like political figures. It doesn't  
16 apply to -- it's specifically for victims of domestic  
17 violence, sexual assault, or stalking.

18 Q. I see. So New Mexico has not chosen to  
19 expand that protection to political figures?

20 A. No.

21 Q. But it could, if it wanted to, right; it  
22 just hasn't?

23 A. Yeah, it hasn't.

24 MR. GREIM: That's all I have, Your Honor.

25 THE COURT: All right. Thank you, Mr.

1 Greim.

2 All right. Ms. Pino, you may step down.

3 Is there any reason that Ms. Pino cannot be excused  
4 from the proceedings, Mr. Greim?

5 MR. GREIM: No, Your Honor.

6 THE COURT: And Ms. Serafimova, can she be  
7 excused?

8 MS. SERAFIMOVA: Yes, Your Honor.

9 THE COURT: All right. You're excused from  
10 the proceedings. Thank you for your testimony.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: All right. Mr. Greim, have you  
13 now rested?

14 MR. GREIM: I have, Your Honor.

15 THE COURT: All right. Ms. Serafimova, you  
16 have witnesses or evidence you wish to present?

17 MS. SERAFIMOVA: I do not, Your Honor.

18 THE COURT: All right. Then, Mr. Greim, do  
19 you wish to argue your motion?

20 MR. GREIM: I do, Your Honor. I have a  
21 PowerPoint that I'll share. Because of the advanced  
22 hour here, I'll move quickly.

23 Your Honor, may I proceed?

24 THE COURT: You may.

25 MR. GREIM: All right. So, Your Honor,

1 first, I want to go through and kind of walk through  
2 some of the facts. I'll then step back and take a  
3 look at the two main legal theories here. I want to  
4 make clear at the outset that the main theory in this  
5 case is going to be our overbreadth theory. You'll  
6 see why as we get into the facts here in a moment.  
7 But while I think there is obvious evidence of  
8 viewpoint discrimination, I think that the  
9 overbreadth will be the main issue.

10 So the first issue, just to walk through  
11 the timeline, you know, Exhibit A shows that way back  
12 on March 29th of last year Local Labs signed an  
13 affidavit. And, you know, the language is very  
14 clear. It simply does not state -- does not make the  
15 promise that we've heard from the defendants here.  
16 It says, "Requester will not use or make available to  
17 others to use the requested material for purposes  
18 other than governmental, election, research, and  
19 campaign purposes, under penalty of law." That is  
20 the promise that's made there.

21 It doesn't say you can't make it available  
22 to use for others to use at all. It says it's going  
23 to have to be for these three purposes. We'll come  
24 back to that.

25 Fast-forward to December 16th, the New



1 Mexico data goes live. What do users see? We heard  
2 about that last month. They see that this is an  
3 election-related use. They see that Local Labs is  
4 the one that went and got it. The entire chain of  
5 custody, how we received the information is available  
6 to people who are interested in that by clicking  
7 directly on the website. Everybody who views it has  
8 to click that they're going to use it for an  
9 election-related use. That's December 16th.

10 Now, two days before that -- looks like  
11 we're out of order here a little bit; we're all in  
12 mid December. Two days before that, VRF had done its  
13 analysis. It contacted the SOS, Secretary of State  
14 regarding this discrepancy.

15 Now, VRF did not claim that it meant that  
16 the Secretary of State had screwed up or made a  
17 mistake. VRF wanted to know why the difference is  
18 there. VRF well knows the difference occurs for a  
19 variety of factors, but it wanted to see the  
20 reconciliation to understand: Okay, have you kept a  
21 record of the people who have been removed, and why,  
22 asked that question. The Secretary never responds.

23 Here's what we learned today, though. We  
24 learned that -- we learned from Ms. Vigil that the  
25 Director of Elections knew about that request and

1 knew about the ProPublica contact, and sort of  
2 decided to handle them together. And because they  
3 were somehow handling them together, they kind of  
4 figured they were covered if they responded to  
5 ProPublica and did not respond to VRF.

6 So the evidence today was not that no one  
7 at the Secretary knew about it. The Secretary's  
8 Office did know about the request, and just chose --  
9 supposedly not deliberately -- but chose not to  
10 respond to VRF.

11 MS. SERAFIMOVA: I hate to interrupt, but I  
12 have to object. That is not what the evidence shows.  
13 For the record, I object.

14 THE COURT: No, that's not the way it  
15 works. You let him make his argument, and you can  
16 respond in a moment.

17 Go ahead, Mr. Greim.

18 MR. GREIM: So VRF issues its press  
19 release. It doesn't accuse anyone of fraud, but does  
20 indicate issues with recordkeeping.

21 That same day ProPublica then approaches  
22 the Secretary of State and asks for comment. And  
23 that's where you see the Secretary of State, not just  
24 saying: We don't have any record of a response, it  
25 affirmatively accuses VRF of being a political

1 provocateur, and trying to spread misinformation, and  
2 having a reason for not reaching out.

3 So, rather than assuming something innocent  
4 or just saying: We don't have any record, the SOS  
5 doubled down, and used it against VRF in a public  
6 comment.

7 More evidence here of the animus that's  
8 building up during this time. On December 21 -- this  
9 is Plaintiffs' Exhibit 7 -- Curtas sends the criminal  
10 referral. And we just heard today from Ms. Pino that  
11 now this is not really very important. This could  
12 have just been taken out of the referral altogether.  
13 But he says that "this is the crux," and he goes to  
14 the spreading of misinformation.

15 You can see, and in our proposed findings  
16 we'll show you all the emails from Mr. Curtas attacks  
17 VRF in mid December here. This is without any effort  
18 to reach out, any effort to find out what's going on,  
19 and again, not responding to the request for  
20 information, even though Ms. Vigil said that they  
21 were taking these issues together.

22 Okay, December 21, the referral goes out.  
23 And again, it's all about "swift action is needed  
24 here," don't take your time, don't review all the  
25 facts. Move swiftly, Attorney General, because this

1 voter data can be used to spread election  
2 misinformation.

3 Now, ProPublica interestingly receives that  
4 referral the day it was made. VRF just received it  
5 as we were getting into this lawsuit and asked for  
6 it. It did not receive it this entire time.

7 Okay. Now we fast-forward to February of  
8 this year. There were major changes in the forms  
9 that the Secretary of State's Office used. We heard  
10 all kinds of testimony, over two days, about why the  
11 changes were made. Supposedly, it's just a  
12 coincidence, statutes change. We take our time, and  
13 we just happened to do it right during the time that  
14 we are going after a group, and our theory is based  
15 on the use that they make of the data.

16 Now, we have the changes here, Your Honor.  
17 I've made a little comparison of Exhibit A, which is  
18 what our guy signed, and Exhibit J, what the  
19 current -- the current form of the request is. And  
20 it's true the statement that: Unlawful use of the  
21 information requested on this form shall consist of,  
22 basically, various kinds of transfer, as stated in  
23 the Voter Records System Act, which is Chapter 5.  
24 That appears in both. But what that means is very,  
25 very different in each form.

1           In Exhibit A, when you finally actually  
2 swear to something and click the affidavit, you swear  
3 that you will not use or make available to others to  
4 use requested material for purposes other than  
5 governmental, election -- and used to say research --  
6 and campaign purposes under penalty of law. That is  
7 the statement that you aver.

8           The statement that you aver today is  
9 different. Under the new statement you can't sell,  
10 loan, or provide access to anyone. You just can't do  
11 it, regardless of the purpose. That's the very first  
12 checkmark. Then they have other things in there  
13 about altering information, using it for a purpose  
14 other than those authorized on this form, or using it  
15 for any commercial purpose.

16           So what they've done -- this is a very  
17 savvy change -- but if they don't want people sharing  
18 it with others for permissible purposes, what you  
19 would do is you would create the new authorization  
20 that they've made. So they have changed the form to  
21 meet their new theory. The key sentence has changed.

22           Before I move on, I'll just mention the old  
23 sentence, which has never changed, the key issue  
24 there is the authorization does not say the unlawful  
25 use of information requested on this form shall

1 consist of various forms of transfer, and then stop.  
2 It says, "as stated in the Voter Records System Act."  
3 It refers the interested reader back to the statutes.  
4 It's not all transfer, selling, loaning, providing  
5 access to that is a problem. It's the selling,  
6 loaning, or providing access to, as stated in the  
7 Voter Records System Act. And when you look at that  
8 act, the only statute in Chapter 5 there is 1-5-22.  
9 And that clearly only applies to data processors and  
10 government entities themselves, not to groups like  
11 us.

12 I know we're getting into statutory  
13 arguments that we kind of discussed last time, but  
14 that is clearly what that sentence means. Article 5  
15 does not talk about anything else. So there is no  
16 notice provided here. There is nothing that goes  
17 beyond the law on Exhibit A. Exhibit J does.

18 Okay. So that's what's happened, we've had  
19 a change. Now what happens in March. Things begin  
20 to heat up. We begin to get a press campaign against  
21 VRF. So, on March 4th, Curtas tells the Alamogordo  
22 Daily News, "If any organization requested and  
23 received voter data or made available to a third  
24 party for an unlawful purpose, we intend to make a  
25 criminal referral, as we have against other nefarious

1 actors." The only person he's referring to in this  
2 space here is VRF. Again, VRF is being called a  
3 nefarious actor. They're upping the rhetoric against  
4 VRF.

5 The article in ProPublica runs only three  
6 days later. Again, what does the Secretary of State  
7 say? She says that having voter registration data  
8 blast out across the internet violates state law,  
9 limiting use of voter rolls solely for campaign or  
10 government activities. We looked at that evidence  
11 before.

12 Her tweets that went out around that same  
13 time, on March 8, says that this is a coordinated  
14 cross-country attempt to impugn the integrity of our  
15 voter rolls. Again, this is dripping with animas  
16 against VRF. She's not claiming there is any actual  
17 problem with the voter rolls; instead, it's about  
18 impugning the integrity. In other words, work being  
19 done by her office to preserve the voter rolls,  
20 that's the problem. It's unfair criticism. And this  
21 goes along with their entire sort of mantra about  
22 misinformation. There is other evidence of that back  
23 on February 9th.

24 We also saw that, you know, what the office  
25 says about use is also rather unclear. On March 2nd

1 they issue a public statement suggesting that really  
2 it's limited to only certain groups. And they say  
3 this Audit Force is not one of those groups.

4 Then later we hear, the very next day, that  
5 really it's about using it for campaign or government  
6 academic purposes, and signing an affidavit. So any  
7 person trying to follow this is getting mixed  
8 messages about what really is covered here.

9 Okay. Now, let's go to the legal issues,  
10 Your Honor. Five different theories apply. I'm  
11 going to make clear -- because we had an issue about  
12 this at our last hearing -- we're not relying here on  
13 retaliation as a grounds for, you know, issuing the  
14 injunction. But certainly, it's going to be a very  
15 big part of this case as we go forward.

16 I'm going to first focus on overbreadth.  
17 We know the three elements of overbreadth. And the  
18 first element is easily met. The defendants don't  
19 have a problem with us here on this point: Sharing  
20 data is speech, and they concede that this is a  
21 direct regulation of speech.

22 We distributed a list of their concessions  
23 at the last hearing, and that's in the pleading. So  
24 we're in the realm of speech.

25 The next question is a total ban. This is



1 a total ban on sharing from entity to entity. They  
2 conceded that you can share within an entity, but I  
3 think we all sort of assume that; we all hope that's  
4 true. So the question is: Is the reach of the total  
5 ban substantial, judged in its relation to the claim  
6 of legitimate sweep of any sort of ban.

7 Now, for purposes of this argument, Your  
8 Honor, we want to assume that a statute could  
9 limit -- could limit commercial purposes; people  
10 taking the data from the Secretary of State and going  
11 and using it just to make money for commercial  
12 purposes or for some of the other things we heard  
13 about: If you wanted to go harass people. You can  
14 imagine totally legitimate sweep of some sort of  
15 restriction on sharing.

16 But here is the key: Both defendants, Ms.  
17 Vigil for the Secretary of State, and Ms. Serafimova  
18 who actually kind of -- I mean, I don't want to use  
19 the word wrong here, but she basically testified and  
20 said in her opening statement last time: This is the  
21 position of the Attorney General. Both of them have  
22 said that any sharing is going to be sanctionable.

23 Now, Ms. Vigil, backtracked on that today,  
24 and she mentioned -- she says they're not statutory  
25 exceptions, but they are exceptions. She would allow

1 some of it. We don't know what the reach of these  
2 exceptions are. But it's very clear. So her  
3 testimony before was that -- and it's from a clip in  
4 here -- and we'll make this available afterwards, by  
5 the way, Your Honor, for your reference, if you'd  
6 like -- that any sharing is going to be a problem  
7 under the statute. And we heard the same thing today  
8 minus her new exceptions.

9 The AG has said the same thing. Through  
10 Ms. Serafimova, she said, "I've stated many times on  
11 the record, including in pleadings, that it is the  
12 AG's position, as a party in this case, that if there  
13 is any criminal liability, it is not for violating  
14 the so-called use restrictions in 5.5. It is for  
15 providing or otherwise providing access or otherwise  
16 surrendering or selling or lending the voter data  
17 under 1-4-5.6."

18 So both of them have been very clear that  
19 it is all sharing that they are banning here. So  
20 now, you know, it did not look that way when we filed  
21 the lawsuit based on everything we learned about  
22 their animus and their motivation. But they've been  
23 very clear in this case, minus the hedging from  
24 Ms. Vigil, that sharing is going to be what they say  
25 the problem is.

1 But the problem is, Your Honor, it's a  
2 matter of out of the frying pan and into the fire.  
3 Because banning all sharing is vastly overbroad. For  
4 example -- and we went through some of these  
5 hypotheticals -- the sheer number of criminal  
6 violations that could occur for purely legitimate  
7 First Amendment protected conduct is massive. For  
8 example, voters cannot band together to share the  
9 data with each other. Each has to pay for the data,  
10 and then refrain from sharing with any other person  
11 who checks their work or compare notes.

12 Because remember Ms. Vigil said: Look out,  
13 because there is a great chance that your data was  
14 pulled not at exactly the same time, it's a different  
15 data set, therefore, they're different data. If  
16 you're sharing what you have with a different voter  
17 who has also paid for it, you may be sharing data,  
18 and that's a problem. And so that very innocent  
19 activity right there is going to violate the statute.

20 Now, we heard that parties sharing with  
21 candidate campaigns of the party's candidates are  
22 okay. We actually heard that today. Both witnesses  
23 came around to that position on the theory that a  
24 candidate affiliates with a party, so they're all  
25 going to be treated together.

1 But, Your Honor, we know that is a rather  
2 arbitrary -- good thing to know, but it just comes  
3 out of someone's mouth at a hearing. We know that  
4 the Campaign Finance Law doesn't treat them the same.  
5 We know the Campaign Finance Law treats a party,  
6 organization, and a candidate campaign as two  
7 different people.

8 In fact, at the federal level we have  
9 really big problems, Your Honor, because we can have  
10 coordination, and we've got to be careful about that.  
11 We've got affiliated PACs, and other things as well.  
12 So it's cold comfort to hear at this hearing two  
13 witnesses say that. But notice how that protection  
14 immediately evaporates if, say, the Republican Party  
15 doesn't have a good candidate, but there's a good  
16 Libertarian candidate, they want to work with that  
17 person for purposes of the election. No. Now, it  
18 becomes a criminal activity because it's a  
19 Libertarian instead of Republican. There is no  
20 rational reason for that whatsoever.

21 For example, the Otero example: There, we  
22 had the Republican Party sharing with a group that  
23 may have been allied. But just the sheer act of  
24 sharing with this group that's going to go, then, do  
25 a canvass is its own independent violation, separate

1 from these claims about harassment. A candidate  
2 campaign cannot share with an allied campaign. You  
3 heard that.

4 Political firms sharing with clients, you  
5 heard a lot of waffling, and really lack of interest  
6 in exactly what Catalist is doing. But if they are  
7 selling their data, or sharing it under some wrapped  
8 fee or something, they're sharing their data with  
9 their clients. That's a violation, too. And there  
10 are several of these firms that have always been  
11 requesting from the state. There has been no effort  
12 at all to try to learn more about it.

13 So what the Secretary really wants here,  
14 Your Honor, to step back from all these examples, the  
15 Secretary wants to be the hub of all this speech that  
16 occurs about this data. The Secretary wants everyone  
17 else to be a spoke out from the hub. And the  
18 Secretary does not want any spokes coming together to  
19 share the data and talk about what they have. And  
20 it's not just discussion. Discussion quickly ends up  
21 requiring that you share the data you actually have.  
22 You know, I've got 5,400 discrepancies. Well, I've  
23 got 4,200 discrepancies. You have to share that data  
24 to understand what you're talking about.

25 THE COURT: Is there any distinction

1 between sharing data and publishing it? And why  
2 shouldn't the Court draw that distinction?

3 MR. GREIM: I don't think there is any  
4 distinction, Your Honor. I mean, the statute  
5 certainly doesn't make that distinction. And, you  
6 know, when you publish the data, you are inviting  
7 other people in to look at it and use it for the  
8 purpose that you've required them to follow. And so  
9 I don't think we can -- when we've got such an  
10 overbroad statute, which this is -- I don't think we  
11 can say: Well, some of these applications of this  
12 overbroad statute are closer to something that I feel  
13 good about. You know, you're out here publishing it,  
14 instead of just sharing it, therefore, we deny the  
15 claim.

16 With an overbreadth claim, we can't do it  
17 that way. In fact -- and I'll say this is our  
18 position here, but with an overbroad usage customer  
19 rule, here you don't have to be within the protected  
20 zone to have standing to make the challenge.

21 But I also don't think that there is a  
22 distinction there, because both of these are speech.  
23 They are both speech. They're both protected  
24 activity.

25 I also want to point out, banning all

1 sharing is just not necessary. Nothing is stopping  
2 the state from enacting a statute to allow  
3 prosecution of a use that could be constitutionally  
4 prohibited.

5 Now, the state hasn't drawn its statutes up  
6 that way. But for purposes of a federal  
7 constitutional analysis, we are not stuck with the  
8 particular mishmash of statutes that have evolved  
9 over time in New Mexico, for purposes of deciding  
10 whether there is a narrow fit. In fact, if the  
11 statutes don't really cover the harm well, that goes  
12 to the lack of a narrow fit.

13 So this, kind of,  
14 everyone-signs-an-affidavit-and-then-they-get-prosecu  
15 ted-for-a-false-affidavit system, is probably the  
16 most unwieldy way you could try to protect people.

17 Something else you could do: You know, you  
18 could require that providers of data give notice to  
19 everyone of New Mexico's restrictions, which VRF does  
20 on its website -- or did before it pulled down New  
21 Mexico. In fact, that is one of the uses,  
22 supposedly, of the affidavit is that people then see,  
23 oh, these are the requirements that face me here.

24 The problem is that the affidavits have  
25 changed in New Mexico. They are completely

1 inconsistent. And New Mexico claims that they're all  
2 still accurate.

3 Sharers of data could be required to  
4 collect identifying information on users, and then  
5 provide those to authorities in the event of an  
6 investigation. So let's say that VRF is out there,  
7 you know, sharing its data; it's finding problems in  
8 the voter data, sending it to the Secretary of State,  
9 making corrections. But then one day suddenly some  
10 commercial vendor, you know, sends a solicitation to  
11 everyone on the voter data list. They've somehow  
12 found a way to scrape it and send it out, as one of  
13 the users who clicked on and said they would just use  
14 it for a good use. Okay. Well, what you could do in  
15 that case is say: Well, VRF, we think it came from  
16 you. Can you please send us the people who have  
17 accessed it. And anyone, you know, who is given  
18 notice, as you are required to do, and failed to  
19 comply with that notice, can be prosecuted. You  
20 don't have to prove a false affidavit at that point.

21 THE COURT: Mr. Greim, we've been going  
22 another hour and a half. I need to give Ms. Bean a  
23 break to rest her fingers. So we'll be in recess for  
24 about 15 minutes.

25 MR. GREIM: Okay. Thank you, Your Honor.



1 (The Court stood in recess.)

2 THE COURT: All right. Mr. Greim, if you  
3 wish to continue your closing argument, you may do so  
4 at this time.

5 MR. GREIM: Thanks, Your Honor. And I  
6 think I have about probably about 10 minutes left at  
7 most here.

8 So the final reason -- we were speaking  
9 before about why banning all sharing is unnecessary.  
10 The final point is the Secretary of State does not  
11 really use these affidavits. Ms. Vigil said that  
12 they don't request additional information, they don't  
13 investigate to see whether the information on the  
14 affidavits is true. They simply wait for complaints.  
15 Even when they do receive information, as in the case  
16 of ProPublica, they're not really very eager to get  
17 to the bottom of it. Although, we did hear her  
18 promise on the record that they would consider it.

19 So, in short, a complete ban is not  
20 necessary to meet any legitimate state interest here.  
21 There are things short of that that would be covered,  
22 that would not sweep out and criminalize such vast  
23 realms of protected activity.

24 So, Your Honor, that's our main theory.

25 I do want to go to kind of our next point,

1     though. This was our original theory when we first  
2     got the documents, before we learned about this sort  
3     of change in position. And this is really a content  
4     or a viewpoint based ban. The claim that the  
5     defendants are merely enforcing the plain language of  
6     the statute, which purportedly criminalizes all  
7     sharing is a recent fabrication that happened in this  
8     case.

9             First, the statutory analysis is simply  
10     incorrect, as we've already covered sort of ad  
11     nauseam.

12            Second, even if that statutory analysis was  
13     correct, then a large swath of current uses are  
14     criminal, but are going unpunished and  
15     uninvestigated, while the AG refers VRF, meanwhile,  
16     to the FBI, and as we'll see in other exhibits we did  
17     not get into today, confers with the California AG on  
18     other projects apparently related to VRF.

19            This is contradicted also by the forms,  
20     including by the Local Labs form that was signed,  
21     that set up a different system.

22            And finally, the forms were changed  
23     recently, and just before the story broke.

24            Now, if we do have a direct restriction on  
25     speech, which the Secretary of State admits, then it

1 applies to particular speech because of content or a  
2 viewpoint expressed, including the purpose-based  
3 restrictions. So we cited two cases before on those.  
4 I just included them here. Again, the evidence here  
5 is very, very strong. The Secretary of State clearly  
6 referred to VRF, because it believed this was  
7 misinformation, and was not government related. We  
8 heard that from Ms. Pino before she was able to take  
9 her first break in her testimony.

10 THE COURT: Now, if you're intending for me  
11 to be looking at a PowerPoint, it's not up. Do you  
12 know that?

13 MR. GREIM: No, Your Honor, I failed to  
14 share it. Thank you for the alert. Okay. It should  
15 be up now. Okay. All right. Very good.

16 And so we learned, Your Honor, that  
17 misinformation truly was the issue here. Pino  
18 testified that even though she doesn't have the  
19 information about what the misinformation was, that  
20 if the allegations about VRF were correct, then it  
21 could not have been engaging within the sort of  
22 content-based requirements. That was the reason for  
23 the referral.

24 Now, I admit the Attorney General has come  
25 in here and said: Well, wait a second, whatever the

1 Secretary of State's people may have originally said,  
2 we're doing something different now. We're here only  
3 on the sharing theory. It's not at all about the  
4 rest of it. They've been very clear about that.

5 The problem, though, is the Attorney  
6 General has jumped in with gusto here. And we keep  
7 hearing, as we'll see with these new requests that  
8 VRF has made, it seems like we can't get a straight  
9 answer about reasons why we're being denied access to  
10 things. And that, Your Honor, is a telltale sign  
11 that there is something else going on here than just  
12 a dispassionate weighing of the statute.

13 Finally, whether you view this as a content  
14 or a viewpoint-based ban, or whether you look at this  
15 as an overbreadth issue, it's going to fail strict  
16 scrutiny. And we'll come to that in just a second.

17 Your Honor, I won't go into great detail on  
18 the statutory interpretation being flawed. I think  
19 we've almost sort of flogged that issue a little bit.  
20 But I do want to point out something that wasn't  
21 covered before. And it's this criminal provision  
22 1-4-5.6, the definition of the crime of unlawful use  
23 of voter data refers to purposes. It consists of a  
24 knowing and willful use of such information for  
25 purposes prohibited by the Voter Records System Act.

1 And then, what's odd is it refers to Article 5 en  
2 masse.

3 Okay. We look to Article 5. There is no  
4 reference there to purposes. You have to be  
5 creative, and you have to say: Well, the  
6 prohibitions on the state or data processors not  
7 disclosing, that's kind of like a purpose, so those  
8 are the purposes we mean, and we're going to import  
9 those over into 1-4-5.6.

10 But there is a much easier explanation for  
11 this. You don't have to stretch. Okay, you can go  
12 straight to the fact that in 2011, all these statutes  
13 were amended. And at that time, 1-4-5.5 and 1-4-5.6  
14 were both over in Article 5. So the references to  
15 purposes in 1-4-5.6 made total sense, because at that  
16 time, the purposes of governmental or election or  
17 election campaign -- and I think even research at  
18 that time -- they were in Article 5. These two  
19 statutes moved over, they shifted over in 2011 to be  
20 in Article 4, for whatever reason.

21 And so, you know that's hardly the only  
22 reason to disagree with the state's statutory  
23 interpretation -- which can't be right -- but this  
24 explanation the oddity of why purposes are referred  
25 to in 1-4-5.6, but when you look to Article 5, there

1 is no reference to purposes anywhere. It's a remnant  
2 of 1-4-5.5, and they just didn't think to change that  
3 when they moved these two statutes over. We'll have  
4 more about this in our briefing, but I wanted you to  
5 see this.

6 Okay. I want to now address the issue that  
7 the Court raised in our last hearing. And, you know,  
8 the basic question is: Well, if they got the statute  
9 wrong, if they're not actually applying the statute,  
10 isn't this a matter where you've got to go to state  
11 court and have a state court say: Stop, Attorney  
12 General, or stop, Secretary of State; you can't do  
13 that, because the statute doesn't give you this  
14 authority.

15 And, fortunately, that's not how Section  
16 1983 works. Because there are many cases, many  
17 famous cases, when you begin to look at the facts --  
18 and we had to finally stop doing this -- but many  
19 famous cases where a state official would rely on a  
20 statute, a state statute; clearly have it wrong, and  
21 then use that to violate the constitutional rights of  
22 the defendant. So one reason, after the Civil War,  
23 that the statute was drafted this way, they say,  
24 "Under color of any statute," so if someone purported  
25 to rely upon a statute -- which they're doing here --

1 "or also regulation, custom, or usage." So it may  
2 not even be something that ties back to a statute.

3 So it could be really even worse than the  
4 conduct here, where, potentially, there is not even a  
5 statute that even comes close. And that was Adickes  
6 versus Kress, which I've referenced here. This is  
7 discrimination in places of public accommodation.  
8 And the defense was raised there, well, there is no  
9 statute that says you have to do this. And there,  
10 the Court was very clear, we look at the  
11 interpretation of custom, we look at the settled  
12 practices of state officials of imposing sanctions or  
13 withholding benefits. Well, that's what we have  
14 here. We have a practice of the Secretary of State,  
15 and now, the Attorney General has unfortunately  
16 signed on, saying: You can't do sharing. That's  
17 really what the statute means, and you'll be  
18 prosecuted for that, even though there is hints today  
19 of nibbling around the edges, and allowing some  
20 sharing. But, of course, we'll never know what those  
21 are. That leads to separate issues like vagueness.

22 One important case which we'll talk about,  
23 the Dombrowski case, Your Honor, I took a little  
24 liberty here, and I took a clip from the Oliver Stone  
25 movie on JFK, because it relates to the DA in New

1 Orleans, Garrison, who also played a prominent role  
2 in that movie.

3           Anyway, in the Dombrowski case, he went  
4 after several civil rights groups, saying that they  
5 violated a state statute against subversive communist  
6 organizations. The plaintiffs there said, Hey, you  
7 know, Garrison and others are using the state statute  
8 to harass us. We are not a communist front group.  
9 You know, we're a -- this is a civil rights group.  
10 And the Supreme Court said: Look, it is not right  
11 for you -- the district court was wrong, actually, to  
12 hold that it should abstain pending authoritative  
13 interpretation of the statutes in the state courts,  
14 which might well decide that, yes, you know, you're  
15 not communist party front group, so you're not  
16 covered here. What the Supreme Court said is: No,  
17 they're threatening you with prosecution of the  
18 statute. The threats themselves are the chill. And  
19 that's the violation.

20           And so, yes, you can come into court, even  
21 though we're going to have to potentially look and  
22 see what the statute means, it is not appropriate to  
23 abstain when there is an actual federal  
24 constitutional violation. That's the last picture I  
25 have in my slide show. But I'm almost done.



1           So finally, on strict scrutiny, the state  
2           gave us four interests in their brief. They adhered  
3           to those during the hearing, I think. One is to make  
4           sure that people sign the affidavit and know the  
5           permissible uses. The problem, Your Honor, is that  
6           the affidavits themselves have changed, and they are  
7           wrong.

8           It's unclear that people not knowing the  
9           permissible uses of voter data is that big of a  
10          problem. And a total ban on sharing is not narrowly  
11          tailored to deal with that situation.

12          Second is, we need to make some money,  
13          you've got to raise fees. Well, there are many other  
14          ways to handle that. Again, a total ban is not  
15          narrow tailoring.

16          Next, they say it makes voters feel better  
17          to know that disclosure is only on a "need to know  
18          basis." First of all, there was no evidence of that,  
19          other than kind of the leading testimony that Ms.  
20          Pino was taken through about her own feelings. There  
21          is other things you can do to make voters feel better  
22          about protection. They could extend the  
23          nondisclosure law to public officials; nothing  
24          stopping them from doing that. But it assumes the  
25          conclusion, too, that only some people need to know.

1 That is what the case is about. You can't really  
2 assume that conclusion as part of your rationale as  
3 well.

4 And then finally, combating misinformation  
5 because of stale data, that has all the same problems  
6 as in point 3. There is not a single -- not a shred  
7 of evidence of voters being up in arms because of  
8 stale data.

9 That doesn't apply to VRF, which does  
10 update its data. The example that they gave with Ms.  
11 Vigil was incorrect, actually. Because the entire  
12 point of VRF's analysis was to compare the April data  
13 to the November data from the election, and then try  
14 to explain why the discrepancy was there. It didn't  
15 matter that somebody was complaining about the  
16 following December.

17 So there is just not evidence to support  
18 these interests. And even if they are legitimate  
19 interests, they're not compelling enough, and there  
20 are certainly many other provisions you could enact  
21 to advance the same interests here.

22 I've mentioned retaliation here. We're not  
23 asking for a relief based on this theory. You'll see  
24 more of it, and I want to emphasize here mainly the  
25 idea that the evidence seems clear, despite what you

1 heard Ms. Pino kind of backtrack on her referral;  
2 that it was this idea of misinformation that  
3 motivated everything, motivated the strong language  
4 and attacks against VRF in the media. And it brought  
5 the AG in.

6 The AG is pressing the investigation. The  
7 AG has tried to refer this to the FBI. No one is  
8 backing away and saying: Well, wait a second here, I  
9 think we might have gotten the statutes wrong. Is  
10 there some kind of off ramp? They're all in.  
11 They're all in to go after VRF, even after knowing  
12 this sort of thinking that led to the referral in the  
13 first place.

14 Okay. We're about done here. That was all  
15 on the merits.

16 Of course, there are multiple factors here  
17 for preliminary injunction. Irreparable harm to the  
18 plaintiffs for having to take the data down;  
19 therefore, cutting off all of its communications with  
20 its users. That is a direct harm against speech.  
21 Under Elrod versus Burns, that's irreparable harm.  
22 That is clear and there is no questioning that  
23 authority.

24 Lack of harm to others is the thing that  
25 the state has focused on here. The problem is there

1 was no evidence, the state brought no evidence of  
2 complaints that it received about people in New  
3 Mexico coming forward and saying: Hey, we're worried  
4 about VRF, or we're concerned. We're being  
5 threatened. We're being harassed. I think I don't  
6 want to register to vote now. I want to cancel my  
7 registration.

8 Everything we heard was speculative and it  
9 was basically the state's own witnesses being led  
10 through a series of questions to agree that they  
11 would be concerned and have to do this or that.

12 But remember, Your Honor, the state itself  
13 has set up a system where everything comes down to  
14 this affidavit. It did not have to be this way. It  
15 doesn't need to stay this way. And so there has been  
16 no actual evidence of harm to other people.

17 Finally, the public interest. And here,  
18 this is where the statute comes into play. The  
19 statute, properly interpreted, does weigh the  
20 competing interests. Don't forgot, we have a  
21 National Voting Rights Act, which we'll hear more  
22 about in the coming weeks that say that the states  
23 have to share this data. That is the system of  
24 sunlight is what the federal government has  
25 prescribed. States have leeway in how they do that.

1 But the idea that this stuff needs to remain private  
2 and that's public interests, that's sort of not open  
3 to us because the statutes themselves tell us what to  
4 do.

5 In fact, they try to -- the Secretary of  
6 State knows how to go and change the statutes. They  
7 tried to once before. It apparently failed with  
8 another change this year. Why do the statutes still  
9 say what they do, if the law and the public interest  
10 is really what the Secretary of State says? The  
11 statutes don't make the choices, the Secretary does.

12 Finally, Your Honor, what injunction should  
13 issue here? And again, we'll make this available, it  
14 will be in briefing. I want to just put it in words  
15 here. The defendants, and all those in concert with  
16 them, should be prohibited until further notice from  
17 taking any steps to investigate, threaten, cite,  
18 charge, prosecute, or punish VRF, its agents,  
19 employees, officers, or those in privity with it,  
20 under the three statutes that the defendants have  
21 raised here, for the use or sharing of New Mexico  
22 voter data, so long as the purpose of the use or  
23 sharing is to engage in or foster communications or  
24 analysis regarding officials' conduct of New Mexico  
25 elections or regarding New Mexico's maintenance of

1 its voter lists and election systems.

2 So, Your Honor, that's what we're doing  
3 today. The record shows that's what we're doing.  
4 We're not asking for free rein here. The lines we've  
5 drawn are actually the lines in the statutes. So  
6 when you've got this situation of an overbroad  
7 customer usage, a good tailored injunction ought to  
8 follow the lines of the statute. Because that's  
9 available to us here; that's what the preliminary  
10 injunction should look like; and that's what we  
11 respectfully ask the Court today.

12 Thank you, Your Honor, for your immense  
13 patience with us, and with me, in particular, today.

14 THE COURT: And you'll be filing this  
15 PowerPoint on the CM/ECF.

16 MR. GREIM: I can file it on the ECF. I  
17 could file proposed findings and conclusions on the  
18 ECF and give this informally. Whatever the Court  
19 desires.

20 THE COURT: Well, we'll talk about findings  
21 of fact and briefing a little bit later. But why  
22 don't you file this PowerPoint on CM/ECF.

23 MR. GREIM: Okay.

24 THE COURT: Thank you, Mr. Greim.

25 Ms. Serafimova, if you wish to make a

1 closing argument, you may do so at this time.

2 MS. SERAFIMOVA: I do, Your Honor. Thank  
3 you.

4 And I'll have to start by saying that it's  
5 still unclear to me what theory plaintiffs are  
6 pursuing. They're talking overbreadth generally,  
7 without tying it to a particular statute. So I will  
8 go over both statutes that we have been discussing.

9 The first statute is 1-4-5.5. This is the  
10 statute that requires an affidavit and has the  
11 so-called use restrictions. And plaintiffs lack  
12 standing to challenge the constitutionality of that  
13 statute on any theory. First, regular standing  
14 requires a credible threat of prosecution. As I  
15 stated before, and as I was quoted to have stated  
16 before previously, the Attorney General's Office is  
17 of the position that any prosecution will be under  
18 1-4-5.6, not 1-4-5.5. And that is based on our  
19 statutory interpretation, which, again, we'll brief  
20 in detail after today. But also we discussed more  
21 than once up until today.

22 And so there is no credible threat of  
23 prosecution under 1-4-5.5. And in any event, that  
24 statute does not carry its own criminal penalty. And  
25 so we don't have a signed affidavit, and therefore,

1     there cannot be any false swearing. So if there is  
2     no regular standing to challenge 1-4-5.5, then there  
3     can be void for vagueness claim with respect to  
4     1-4-5.5. And likewise, there can be no claim, no  
5     prior restraint claim with respect to 1-4-5.5.

6             Now, if this is the statute that plaintiff  
7     asserts is overly broad under the First Amendment,  
8     then they cannot demonstrate an injuring fact.  
9     Because as this Court has indicated, if the Court  
10    accepts that this is the statute that is relevant,  
11    then it will likely find that VRF's use of uploading  
12    the data falls under either governmental use or  
13    election campaign related use. And given that their  
14    conduct is not currently prohibited under that  
15    statute, they don't have standing to challenge it,  
16    because there is no injury in fact. Because  
17    invalidating 1-4-5.5 on its face for overbreadth  
18    would not change their circumstance one bit.

19            The same is true of Holly Steinberg. She  
20    actually has not engaged in any conduct whatsoever,  
21    so she's under no threat of prosecution under any  
22    statute. But, again, for all the purposes, her  
23    circumstances will not improve, should the Court find  
24    in her favor.

25            And then, to the extent there is an



1 argument to be made that VRF would benefit from Local  
2 Labs' conduct being found constitutional, that  
3 statute still prohibits commercial use. And I  
4 believe Mr. Greim has admitted today that commercial  
5 use can be regulated. And so Local Labs --  
6 regardless of, you know, whether this Court finds  
7 that uploading is governmental use or election use,  
8 Local Labs' conduct of selling the data -- and we  
9 know they sold it because they paid 5,000 for it, and  
10 then they charged 15,000 for it to VRF -- so their  
11 conduct would still be a violation and not  
12 constitutionally protected, so there would be no  
13 change in circumstances there.

14 So, again, if there is no injuring fact, we  
15 need Article III standing regardless of the theory.  
16 So even in overbreadth cases, we need Article III  
17 standing. Plaintiffs cannot show injuring facts with  
18 respect to 1-4-5.5, so they don't have a claim that  
19 survives there.

20 Now, on a substantive challenge, again, we  
21 do -- given our interpretation of 5.5, we do concede  
22 that plaintiffs have not violated any of the use  
23 restrictions, because those use restrictions do not  
24 prohibit uploading the data to a website. That is  
25 under 5.6. So that doesn't change our theory. And

1 with respect to -- to the extent that the challenges  
2 that there is substantial overbreadth substantively  
3 in 5.5, given the use restrictions, plaintiffs have  
4 to show that the use restrictions, 5.5, substantially  
5 breach the First Amendment rights of the other  
6 parties now before the Court. And, you know, those  
7 use restrictions must regulate substantially more  
8 restrictions than the First Amendment laws. There is  
9 actually no evidence whatsoever on that point. All  
10 that must be real and substantial. Again, nothing to  
11 that effect from any of the witnesses with respect to  
12 5.5.

13 And so Local Labs, their use is commercial  
14 so doesn't get the same protection. And so,  
15 substantively, 5.5 does not actually significantly  
16 chill anybody else's protected First Amendment  
17 rights.

18 THE COURT: Let me ask you this question:  
19 At the last hearing we heard testimony that it is not  
20 members of the public who are doing analysis of voter  
21 data to ensure data integrity, but Voter Reference  
22 staff. And it sounded like the main function of  
23 VoterRef.com for the public is for people to check  
24 their own voting record. If people can check their  
25 own record on the Secretary of State website, then

1 what is the injury to Voter Reference, if they can't  
2 publish this voter data but can only analyze it?

3 MS. SERAFIMOVA: Well -- and I was going to  
4 mention that, Your Honor. There isn't any. Because  
5 anyone -- like you said, any New Mexican registered  
6 voter who wants to check their own data, there is a  
7 section of the Secretary of State's website where  
8 they can go. I have done it. You just put in some  
9 information. You can share that log-in information  
10 with anyone you want. So people can check their  
11 individual information.

12 Like I said, this case is not about that.  
13 It is about people who do not wish to share their  
14 residential address, where their children live, for  
15 example. Your address, my address -- not, of course,  
16 Mr. Greim's address because he doesn't live in New  
17 Mexico and this doesn't effect him. But, yes, if  
18 what they wish to do is allow individuals to check  
19 their own voter records, that's already available,  
20 and it's protected so that no one else is harmed in  
21 the process.

22 So again, I think with respect to 5.5 and  
23 overbreadth, there is absolutely no evidence in the  
24 record that substantial amounts of protected speech  
25 are being prohibited along with unprotected speech.

1 And like I said, there is no standing on any theory  
2 possible. And so there can also not be a void for  
3 vagueness or challenge with respect to that statute.

4 So now we're going to move on to 1-4-5.6.  
5 And, as you know, Your Honor, our interpretation of  
6 that statute is that it incorporates by reference  
7 portions of Article 5, relevant portions of Article  
8 5. And I'll just mention, yes, the statutes were  
9 recompiled in 2011. Since then, there have been  
10 numerous amendments, including the fact that, in  
11 2015, the legislature put the definitions of  
12 governmental purpose and election campaign purpose in  
13 1-4-5.5. But they never thought it necessary to take  
14 the reference in 1-4-5.6 to the voting registration  
15 system as Article 5. That reference has remained  
16 consistent.

17 So we cannot assume that the legislature  
18 was incompetent, was negligent. We have, again,  
19 based on principles of statutory interpretation, we,  
20 in fact, have to assume the opposite. They made  
21 other amendments, they did not make that change, and  
22 that must have been, therefore, intentional.

23 With respect to 1-4-5.6, plaintiffs  
24 actually do not challenge that statute and our  
25 interpretation of it on its face. We've invited them

1 to do that. They didn't brief it. They continue to  
2 deny that that statute is even relevant. So there is  
3 no facial challenge to 1-4-5.6 as of today.

4 Now, they seem to be bringing -- (Zoom  
5 audio garbled).

6 THE COURT: Hold on. Do you want to start  
7 that over? We didn't pick it up.

8 MS. SERAFIMOVA: Oh, I'm sorry. So I was  
9 going to say that there is no facial challenge to  
10 1-4-5.6, unless of course, that's what their  
11 overbreadth argument is intended to be. And I will  
12 address that. And, actually, I might actually start  
13 with that.

14 So, as we briefed in our response, one, it  
15 is our position that, again, 1-4-5.6 prohibits  
16 anyone -- anyone, regardless of identity, regardless  
17 of purpose, regardless of viewpoint, regardless of  
18 content, from distributing voter data that has been  
19 provided or received from our office.

20 Now, I think it's very important to mention  
21 right now that sharing is not a statutory term.  
22 Sharing is something that can be used -- Mr. Greim  
23 has used it, and has led to equivocation. Sharing is  
24 not a statutory term. The statute says: No selling,  
25 loaning, surrendering, or otherwise providing access

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1 to. Sharing can mean that plus. What we are focused  
2 on, the prohibition of selling, loaning, otherwise  
3 providing access to, distributing; those are the  
4 statutory terms.

5 And, so I said it before, and there is no  
6 evidence to the contrary, discussing the data is not  
7 the problem. Analyzing and criticizing it is not the  
8 problem. The problem is when you receive a file from  
9 the Secretary of State's Office, and then you hand  
10 that file over to someone else that is not within  
11 your organization, whether in electronic or paper  
12 form. That is the problem.

13 So, as we discussed in our briefing,  
14 1-4-5.5 is, therefore, completely content and  
15 viewpoint neutral. It doesn't matter what's actually  
16 in the file. It doesn't matter who obtained the  
17 file. It doesn't matter who they're handing it over  
18 to. It doesn't matter why they are handing it over  
19 to that person, and it also doesn't matter what that  
20 other person is going to do with it. So this is a  
21 content neutral regulation, statute; custom, I guess,  
22 was one other term that was used today.

23 As such, it is subject to a different First  
24 Amendment analysis. It is true, we conceded that it  
25 is speech. But it is a different kind of speech that

1 is more akin to conduct. And that is why, as the  
2 Court is well aware, there is a different First  
3 Amendment standard that applies. And we have briefed  
4 that in our response.

5 Now, I do want to address something that is  
6 being put forth for the first time -- and again, this  
7 was not briefed; this is not actually part of the  
8 motion for preliminary injunction -- but for the very  
9 first time plaintiffs are now claiming that 5.6, as  
10 interpreted, and as applied by the Secretary of  
11 State's Office is overly broad under the First  
12 Amendment.

13 Now, to prevail on that theory, they have  
14 to show that 5.6 prohibits a substantial amount of  
15 protected speech, as compared to the unprotected  
16 speech that it prohibits. That's the standard. And  
17 that standard simply has no logical application to a  
18 situation such as this one, where we are analyzing a  
19 content neutral regulation of speech that is akin to  
20 conduct. There is no protected speech -- there is no  
21 unprotected speech, in the sense that if it's speech,  
22 all of it is prohibited. No one can upload the data  
23 on a website.

24 And so this is very, very similar to a DMV  
25 case that we cite in our response, where again, it

1 was found to be content neutral. Anyone who obtains  
2 my address from a Motor Vehicle Department is then  
3 prohibited from further distributing that address.  
4 It doesn't matter for what purpose, to whom, and so  
5 on. And the court in that case found that there was  
6 no First Amendment violation.

7 It simply does not make sense to try and  
8 apply an overbreadth theory where, if it is speech,  
9 then all of it is prohibited. It's not about the  
10 speech. There is no distinction between, again,  
11 protected speech and unprotected speech. So if  
12 overbreadth of 5.6 is the plaintiff's main theory,  
13 they don't have a case, and the motion should be  
14 denied on that ground.

15 Now, if you give me a second just to go  
16 through.

17 Okay. So next Mr. Greim talked about  
18 animus. And yes, there is some emotional language in  
19 some of the communications. But animus does not  
20 exist in a vacuum. It actually has to be -- it's  
21 only relevant if it is evidence that some adverse  
22 action was taken because of such animus or motivated  
23 by such animus. And there is simply no evidence to  
24 any adverse action whatsoever.

25 We treated their IPRA request the same as



1 everybody. We responded. We -- and by the way, you  
2 know, they claim that -- the retaliation claim they  
3 didn't have enough information to include that in the  
4 complaint. Well, all they needed to do before filing  
5 the complaint is submit an IPRA request, and they  
6 would have received the very same information.

7 But setting that aside for now, we  
8 referred -- or the Secretary of State -- when I say  
9 "we," I speak mostly on behalf of the Secretary of  
10 State's Office, as the main defendant here -- but  
11 when that referral was made, it was treated exactly  
12 the same as the only other referral that had ever  
13 been made, which was -- it happens to be a couple of  
14 weeks subsequently, but neither target was given  
15 advance notice, neither target was contacted.

16 The Office believed they had probable  
17 cause, and so they summarized that belief into a  
18 letter, and they sent it to the Attorney General's  
19 Office.

20 So, yes, perhaps the Secretary of State's  
21 Office and its communications director did not  
22 applaud VRF for uploading everyone's data online, but  
23 that, in and of itself, is not unlawful. And, again,  
24 there is no adverse action to actually litigate here.

25 Mr. Greim talked about the form, and how

1 the form has changed, and only now does the form  
2 require the requester to actually promise not to  
3 upload data on websites, essentially. Well, 5.6 does  
4 not actually require an affidavit. So that language  
5 does not even have to be in the form. It always has  
6 been, in order to put people on notice, in order to  
7 serve the state interests of making people aware that  
8 they should not be redistributing our voter data.  
9 But there is no legal requirement for it to be there.  
10 It's purely informational. And even that is not --  
11 you know, actual notice is not required. As we all  
12 know, everyone is presumed to know what the law  
13 allows and prohibits. And we still presume that  
14 there is a deterrent effect, even if we don't require  
15 actual knowledge.

16 So I did mention that sharing, again, has  
17 caused a lot of equivocation today. It is not a  
18 statutory term. And so the important part is  
19 selling, loaning, otherwise surrendering or  
20 distributing the voter data, again, does not apply to  
21 discussions. There is no evidence that it does. And  
22 actually, I believe, we have evidence on the record  
23 that it does not apply to lawful discussions.

24 Again, the hypothetical that two parties  
25 may want to share the data that led to their

1 conclusions, that's unfortunate. But, again, the  
2 only way for 5.6 to be effective is if it prohibits  
3 all sharing outside of the regulatory process,  
4 because otherwise, it creates a gap that we cannot  
5 prosecute, that we cannot control.

6 And also, there was some argument that, you  
7 know, voter A could not discuss the data with voter  
8 B; every one of them has to pay for it. There is no  
9 argument that the fees are unreasonable. So that's  
10 not before the Court. So we have to assume the fees  
11 are what they are. Plaintiffs are not complaining  
12 about the fees. If people have to pay for the data,  
13 sobeit. But that's what the New Mexico legislature  
14 has decided. But that's not a constitutional factor  
15 to invalidate the statute.

16 I think Mr. Greim talked about a  
17 content-based referral, that the referral mentions,  
18 you know, the three purposes, and therefore, the  
19 referral is content based. Obviously, the witness  
20 disputes that, the testimony disputes that. The crux  
21 of the referral is in the conclusions. But,  
22 nevertheless, assuming for the sake of argument that  
23 there was a content-based referral, first of all,  
24 that's the theory being brought for the first time  
25 today.

1           Secondly, it doesn't entitle plaintiffs to  
2     the relief that they're seeking on the motion. If  
3     the referral is content based, there is no -- that  
4     doesn't lead to them now uploading the data. Maybe  
5     we get another referral that's better phrased.  
6     Perhaps. I don't even know. I don't know what the  
7     remedy is. But it certainly is not to ignore 5.6,  
8     and interpret it by the Attorney General's Office and  
9     the Secretary of State's office.

10           And so, again, there seems to be a  
11    suggestion for setting aside overbreadth, because  
12    again, there is no protected and unprotected speech.  
13    We cannot quantify how much protected speech and how  
14    much unprotected speech 5.6 prohibits, because it  
15    prohibits all uploads and all distribution. And it  
16    doesn't care for the contents and the viewpoint. So  
17    overbreadth does not apply.

18           To the extent they're saying we are  
19    applying that statute in a discriminatory way to  
20    them -- which I guess is where they were getting at  
21    with the custom citation -- there is no evidence to  
22    that effect. We didn't deny Local Labs' request for  
23    data, the same way we didn't deny Catalist and I360's  
24    request. They were valid on their face. We didn't  
25    have any information to think otherwise, so those

1 were processed and the information was provided.

2 Also, the two referrals to the Attorney  
3 General's Office, they were treated the same. No one  
4 was given advance notice. No one was ignored on  
5 purpose. Both were treated equally.

6 And, you know, a mention was made that we  
7 are working with the California Attorney General's  
8 Office. I would have to be the witness on that point  
9 because I think the only person actually who has  
10 spoken to them -- and again, as the witness has  
11 testified, the California Attorney General's Office  
12 reached out to us, not the other way around.

13 So, no, we did not ignore their request to  
14 speak. But again, if Mr. Greim would like to put  
15 evidence on the record to that effect, I would have  
16 to be -- I am the only one who can testify to that.

17 So we've never actually denied any properly  
18 filled out affidavit. Again, there is the only one  
19 exception, which is the VRF affidavit that was  
20 submitted May 27th, as we discussed, it will very  
21 likely be denied. Although, as you heard, a final  
22 decision has not been made. But, again, it is out of  
23 concern that compliance with that request would  
24 actually lead to criminal liability for the Secretary  
25 of State's Office. And that is under 1-20-15, which

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1 is conspiracy to violate the Election Code.

2 So, you know, there was some suggestion  
3 that vast amounts of sharings are not being  
4 prosecuted or referred for prosecution. That is  
5 simply not true. Again, the witnesses testified they  
6 never heard of anybody else. The ones that they have  
7 heard about, Catalist and I360, we repeated that  
8 many, many times. The election was the priority in  
9 the last many months. And no one was worried about  
10 Catalist between the last hearing and today. That  
11 was just not a priority. So no conclusion should be  
12 drawn from that. In fact, Ms. Vigil promised to take  
13 a closer look at that. And there is no reason to not  
14 believe her on that.

15 And so, again, I think a lot of the  
16 so-called evidence of unprosecuted unlawful sharing  
17 comes from, with all due respect, Mr. Greim's misuse  
18 of the term "sharing." But the witnesses testified  
19 it is selling, loaning, otherwise making --  
20 distributing, otherwise providing access to. If an  
21 organization requests the information, it can be  
22 shared internally, as long as the uses remains  
23 lawful. But it can never be shared externally.

24 And Mr. Greim mentions the Campaign Finance  
25 Act. I know nothing about the Campaign Finance Act.

1 He has not cited it in any of his briefs. I assume  
2 there is a reason for that. So I would just ask the  
3 Court to ignore that mention.

4 On that point, Mr. Greim also mentioned  
5 that the federal election -- there is a federal  
6 election statute that requires us to make the  
7 information at issue public. Well, if that's the  
8 case, that would be a federal claim. We're in  
9 federal court. Why aren't we pursuing -- or, you  
10 know, why aren't we here under that claim? And  
11 again, it's not briefed. It's not put in front of  
12 this Court. So I would ask the Court to weigh that  
13 comment accordingly.

14 We mentioned that the Democratic Party  
15 cannot put the data on its website. The same as the  
16 Republican, same as the Libertarian. No one can do  
17 that. There is no content-based discrimination and,  
18 there is no discriminatory enforcement.

19 Okay. And lastly, you know, we talked  
20 about the state's interest is extremely strong in  
21 this case. I mean, you know Your Honor, has  
22 corrected me numerous times, these are fact  
23 witnesses. But when they testify about their own  
24 experience as voters, that should be discounted.  
25 Well, that doesn't make sense.

1           So when Ms. Pino says that as a high-level  
2 public official, she has an interest in her privacy,  
3 and she has taken affirmative steps as to actually  
4 keep her residential address private, and she's  
5 concerned about it being public, that's enough to  
6 discount it. Yes, it's not a study, you know, how  
7 voters will say, but it's definitely relevant  
8 credible evidence that there will be a negative  
9 effect, should the motion for preliminary injunction  
10 be granted.

11           And we've discussed how, as Your Honor  
12 stated, if what they want is to allow people to check  
13 the accuracy of their own data, they can do that.  
14 They also have other avenues. They can ask people to  
15 voluntarily provide that information to them. They  
16 can send mailers asking. They can create an  
17 interactive website where people can log into their  
18 information. There is no significant burden to them.  
19 Because their presumption is that everyone is just so  
20 happy to have the information online, well, they  
21 should test that presumption and ask people to  
22 volunteer that data.

23           So another element I want to highlight, is  
24 again, it is extremely important to keep 5.6 on the  
25 books as we interpret it. Because, again, if I don't



1 sign an affidavit, and I obtain the information from  
2 some third party who is willing to risk being  
3 prosecuted for making a false statement or a false  
4 affidavit, then without 5.6, I cannot be prosecuted,  
5 and I can do with that data whatever I wish, and then  
6 the whole system is dismantled. So 5.6 is critical  
7 to making -- you know, 5.5 works to making the system  
8 work, to fostering trust in the electorate process,  
9 encouraging people to participate, which the  
10 requisite first step is to register and to provide  
11 all this private information.

12 And lastly, of course, there is the issue  
13 of the fees. If I don't obtain data by way of  
14 affidavit, the Secretary of State's Office has no way  
15 of charging me for it.

16 And so my last point would be that, again,  
17 the retaliation claim is not part of the motion for  
18 preliminary injunction. And so -- well, I'll stop  
19 there because there is really no point to go further  
20 on that, I don't believe.

21 And just to recap, Your Honor. If we're  
22 under 5.5, there is no Article III standing, because  
23 a favorable -- there is no injuring facts and  
24 ultimate redressability. You have expressed the  
25 belief that their use is already lawful under one of

1 the defined terms. There is also no regular standing  
2 or prudential standing, because they cannot show a  
3 credible threat of prosecution, because I have said  
4 many times -- and then, of course, case law, where  
5 essentially the functional equivalent has happened  
6 where a prosecutor will sign an affidavit, and say,  
7 "I'm not going to prosecute plaintiff," and the cases  
8 get dismissed for lack of standing. And if there is  
9 no standing for 5.5, there is no void for vagueness  
10 and there is no prior restraint challenge. And 5.6  
11 is content neutral, applies to everyone regardless of  
12 content, viewpoint, so on and so forth.

13 Overbreadth simply does not make sense in  
14 that sort of First Amendment silo, if you will, where  
15 we have speech that is more akin to -- that is more  
16 akin to content -- I'm sorry, to conduct -- and that  
17 conduct is being regulated in an absolutely content  
18 neutral way. And we've laid out those arguments in  
19 our response.

20 So I very much hope that the Court has  
21 questions that I can answer at this point. But if  
22 you don't, that's all I have for today. But please  
23 do allow me to clarify, if there is anything that  
24 needs clarification.

25 THE COURT: All right. Thank you,

1 Ms. Serafimova.

2 Mr. Greim, I'll give you the last word.

3 And maybe you could start by answering the question  
4 that I posed to the state, and that is that testimony  
5 we heard at the last hearing that it's not members of  
6 the public who are doing the analysis of voter data  
7 to ensure data integrity, but the Voter Reference  
8 staff. And it sounded like, again, the main function  
9 of VoterRef.com for the public is for people to check  
10 their own voting records. If people can check their  
11 own record on the Secretary of State website, then  
12 what is the injury to Voter Reference if they can't  
13 publish this voter data, but can only analyze it?

14 MR. GREIM: Sure, Your Honor. And thank  
15 for you giving me the chance to answer that, because  
16 I -- and perhaps I should have included that in my  
17 presentation. I sort of focused on other parts of  
18 our dispute. But there are really two parts of Voter  
19 Reference Foundation and how it's useful.

20 The first part is this sort of macro  
21 analysis. And that is the analysis that's done by  
22 people at Voter Reference Foundation going through  
23 the data, then publishing those results.

24 And so, for example, when you saw earlier  
25 today the most recent request that we made and said:

1 Hey, we won't public this unless we get an order from  
2 the Court, the internal analysis is really what we  
3 call project 2. That's what we call project 2 in  
4 that letter. And so that's the kind of work that  
5 Tina Swoboda and others would do; they would see if  
6 they find discrepancy or some other issue. They then  
7 reach out to the Secretary of State and they try  
8 to -- you might remember her saying -- they try to  
9 limit the amount of things that can't be figured out,  
10 and they limit the discrepancy down from thousands  
11 and thousands down to, you know, 20 or 30. So that's  
12 project 2. And maybe I should reverse the numbers.  
13 But that's the first thing they do.

14 But the outward, public facing part of VRF  
15 is just the accessibility to the data. That's what  
16 we called project 1 in that letter. And that's sort  
17 of the crowd sourcing element. And this is why I  
18 really want to drill down, Your Honor, because it's  
19 not primarily about someone just checking their own  
20 data.

21 Now, it's true -- I think more people get  
22 to their data and can see the different years they  
23 voted and things than people who tend to just check  
24 the New Mexico website. But remember Ms. Swoboda --  
25 I forget if she walked through it with me or with

1 opposing counsel, or if I said it as initial Q and  
2 A -- but the key is you'd know other people in your  
3 household. You know other people in your precinct.  
4 You have friends and family. So you know quite a bit  
5 more than just yourself. And the idea is that rather  
6 than keeping each person in a silo, where all they do  
7 is just go check their own information -- and we just  
8 hope that millions of people do that -- the hope is  
9 that maybe thousands of people who know, you know,  
10 tens or hundreds of others pretty well, will go on  
11 and check for those, and find out that their great  
12 uncle, who they know passed away three years ago, is  
13 listed as voting last year, or you know, is on the  
14 rolls still, or something like that. And so it's  
15 about far more than just checking your own data.

16 Because if that's all it was, it's going to  
17 take forever for this process to work. People need  
18 to be able to know what's in the data and talk about  
19 it with each other.

20 You might pull it up and say: Well, it  
21 says Uncle John voted two cycles ago, but I think he  
22 died then, and talk to your mother about it or a  
23 friend. That's the point of this, is to get multiple  
24 minds working together out in the general public  
25 about these voter records. So we've got to be able

1 to have those conversations and share that data with  
2 each other or those conversations can't happen.

3 We can't use the power of multiple minds  
4 working together at once. I don't mean to sound like  
5 science fiction here, Your Honor, but we can't just  
6 keep people in their own individual silo, because  
7 that already exists. People would not have spent all  
8 this money and put all this time into Voter Reference  
9 Foundation if all we were doing is just making the  
10 same thing the Secretary of State already has.

11 So I hope that answers your question on  
12 that point. But I'm happy to answer follow-ups,  
13 though, on that issue.

14 THE COURT: No. I'll give it some thought.  
15 Thank you. Go ahead.

16 MR. GREIM: I'm not going to run through --  
17 we've gone on for a long time. I know you're going  
18 to get submissions. But I do want to hit just a  
19 couple of high points. I really want to focus on  
20 this overbreadth theory. I know we talked a lot  
21 about viewpoint discrimination and content-based  
22 discrimination. But I think we're missing the nuts  
23 and bolts of the law of overbreadth here.

24 Overbreadth does not compare protected  
25 versus unprotected speech. That is not what the

1 doctrine does. You heard that from opposing counsel.  
2 Instead, it compares the actual sweep of the law,  
3 versus the plainly legitimate sweep of the law.  
4 That's the delta that we compare. And the actual  
5 sweep of the law here is everything. It can't be  
6 shared outside of a person, if it's a person who  
7 possesses it. It can't be shared outside of the  
8 entity, if the entity possesses it. It can't be  
9 done, period, with an asterisk for whatever the  
10 exceptions that Ms. Vigil believes might exist. It  
11 can't be done at all.

12 So it's a massive -- the sweep is as far as  
13 it can go, when it comes to selling, loaning, or  
14 otherwise providing access to. I think sharing is a  
15 fair word for that. So that's the problem. What's  
16 the plainly legitimate sweep? When might you say:  
17 You can't share it with somebody else? You might say  
18 you can't sell it to somebody else for profit when  
19 it's not for governmental or election or campaign  
20 finance purposes -- or, I'm sorry, election campaign  
21 purposes. In fact, that is what the law says. If we  
22 could read it properly and understand it, that is  
23 what the law says.

24 So Local Labs doesn't -- I'm sorry, Your  
25 Honor.

1 THE COURT: No, go ahead.

2 MR. GREIM: Okay. So Local Labs -- by the  
3 way, it's not a commercial purpose just because money  
4 changes hands. It's a commercial purpose when you  
5 sell it to someone to use it for what everyone  
6 understands to be commercial reasons.

7 It gets even crazier if, say, the  
8 Democratic Party wants to share it with the candidate  
9 and they're going to now, say: Well, wait a minute,  
10 we paid 5,000. We're asking each candidate to chip  
11 in \$800. Well, having money change hands does not  
12 convert this to a commercial purpose. But I don't  
13 want to go off on that tangent.

14 The issue here, we've got to look at the  
15 plainly legitimate sweep, which is pretty narrow  
16 compared to the actual sweep. And that's the issue.

17 The other trap which we should not fall  
18 into is say: Well, you've got to point to one  
19 statute that is overbroad, and you've got to look at  
20 each one of them individually. But that's not the  
21 analysis that the state has done here. Remember the  
22 state has cobbled together parts of 1-5-22, but not  
23 all of it, just parts of it. They've added that to  
24 1-4-5.6 -- part of 1.4.5, 6 and say, that's a new  
25 crime. The new crime is any sharing.



1           So what we're attacking is that theory.  
2     The cobbling together of one statute with another  
3     statute to say New Mexico recognizes a blanket ban on  
4     sharing. That's the thing that we are challenging.  
5     That's what's overbroad. Okay. So there are other  
6     parts of 1-4-5.6 that actually marry to 1-4-5.5, or  
7     at least did before they were both shifted to Article  
8     4.

9           So I just want to be clear on those points.  
10    I don't have a lot more. I just want to come down to  
11    this: There are policy issues here about who should  
12    be able to see the voter data. You know, I recognize  
13    that. And there is arguments that, Hey, Voter  
14    Reference Foundation, we like what you're doing, but  
15    couldn't you do it this way? Or couldn't you engage  
16    in this speech instead?

17           But remember, in the First Amendment  
18    context we don't say: Well, there is alternative  
19    channels of communication open to you, go over there.  
20    When you completely block one channel of  
21    communication, which is what they're doing here with  
22    a blanket ban, that's the scope we look at in a First  
23    Amendment case. They're completely blocking it out.  
24    And they're going beyond the statute. But that's  
25    what they're doing.

1           We're seeking relief. The injunctive  
2 relief we're asking for here does not strike down a  
3 statute. Courts don't strike down statutes.  
4 Instead, in the federal court, they enjoin state  
5 officials from violating a federally protected right.  
6 And they do it in a particular circumstance.

7           So that's what we are asking for here. We  
8 are asking for protection from this ongoing  
9 prosecution that might morph into a new theory down  
10 the road. We'll see. But we're asking for it to be  
11 put on hold so they can put the information back up.  
12 And people are concerned about privacy, but the  
13 statutes already make that decision for us by not  
14 banning this kind of publication. There is no ban.

15           So with that, Your Honor, I think I'm all  
16 done, unless you have other questions.

17           THE COURT: No, I think on the merits  
18 that's it.

19           Let's talk a little bit about procedure.  
20 You've mentioned a few times, Mr. Greim, about either  
21 findings of fact or additional briefing. What are  
22 you thinking and what do you want to do on that?

23           MR. GREIM: Your Honor, I kind of want to  
24 give the Court what will be most useful to it. And I  
25 say findings and conclusions because that's what I

1 find myself doing all the time lately. That's what  
2 courts seem to want. But, you know, whatever would  
3 crystallize the issues best for the Court is what I  
4 want to do. And I'm actually agnostic.

5 THE COURT: Well, I won't force them on  
6 anybody, but, yeah, they are helpful to the Court in  
7 putting together its findings of fact and conclusions  
8 of law. Having said that, what do you want to do?

9 MR. GREIM: Okay. If they're helpful, then  
10 that's what we'll do. I'm agnostic between that and  
11 a brief. But if I were a judge -- and that day will  
12 never come -- I'd probably want findings and  
13 conclusion as well.

14 THE COURT: Do you want to set a deadline  
15 for submitting those?

16 MR. GREIM: Sure. We could probably do  
17 that. Mr. Miller is now coming into my office.  
18 Maybe in 14 days? He's giving me a thumbs up.

19 THE COURT: All right. How does that sound  
20 to you, Ms. Serafimova?

21 MS. SERAFIMOVA: This is more than I  
22 expected from Mr. Greim, so I'm happy with 14 days.

23 THE COURT: All right. So we will plan --  
24 if this is all right -- whatever additional briefing,  
25 findings of fact, conclusions of law you intend to

1 submit will be two weeks from today, which I think  
2 today is the 15th, so it's the end of business on the  
3 29th.

4 Let me ask -- and this question will be  
5 directed more at the plaintiff here. Because I think  
6 I mentioned this last time, I want to be a good judge  
7 and not sit on this to a point where I'm not ruling  
8 in a prompt manner on your motion for a preliminary  
9 injunction. But I would like to think about this.  
10 Using the 29th as sort of a benchmark, how much  
11 longer after that do I have to think about these  
12 issues before you begin to say I'm not being a good  
13 judge and getting my ruling out?

14 MR. GREIM: Your Honor, I've never been  
15 asked that question before, other than like when  
16 there is an election coming up or something.

17 Your Honor, we really would just like it as  
18 soon as we could get it, knowing how much you have to  
19 travel, you're covering in other districts and  
20 things. We would want to get our data back up and  
21 restart New Mexico. But, you know, all I can say is  
22 as soon as we can. But I mean, given that we've  
23 taken two full days, and we're going to have probably  
24 100 findings of fact and 40 conclusions of law, or  
25 something like that, you know, it may take a while to

1 go through the material.

2 THE COURT: Well, give me something  
3 specific.

4 MR. GREIM: All right. Maybe something,  
5 Your Honor, by the third week of July.

6 THE COURT: All right. Let's look at my  
7 calendar. I should have brought it with me. Let's  
8 see, the third week of July. July 1st is a Friday  
9 this year. So the next week would be the 8th, the  
10 next week would be the 15th. If I had it out by the  
11 end of business on July 22, do you think that would  
12 be reasonable and a good court as far as ruling on  
13 your preliminary injunction?

14 MR. GREIM: Your Honor, yes, we would.

15 THE COURT: All right. So I will plan to  
16 have something out by 5:00 on Friday, July 22. And  
17 my math is correct, that is a Friday, right, July 22?

18 Okay. Is there anything else we need to  
19 discuss while we're together? Anything else I can do  
20 for you today, Mr. Greim?

21 MR. GREIM: No, Your Honor. And thank you  
22 very much for staying with us for all these hours  
23 here, and for the court reporter.

24 THE COURT: All right. And Ms. Serafimova,  
25 anything else we need to discuss while we're

1 together? Anything else I can do for you today?

2 MS. SERAFIMOVA: No, Your Honor. Thank  
3 you.

4 THE COURT: All right. Well, y'all have a  
5 good afternoon. Be safe out there. And I'll look  
6 forward to your submissions.

7 MR. GREIM: Thank you.

8 MS. SERAFIMOVA: Thank you.

9 (The Court stood in recess.)  
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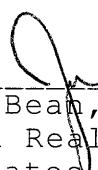
## C-E-R-T-I-F-I-C-A-T-E

UNITED STATES OF AMERICA

DISTRICT OF NEW MEXICO

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matter therein stated.

In testimony whereof, I have hereunto set my  
hand on June 18, 2022

  
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